

RAWLSIAN CONCEPTION OF JUSTICE: UNDERSTANDING ITS CRITICS

**Dissertation Submitted to the Jawaharlal Nehru University in Partial
Fulfillment of the Requirements for the Award of the Degree**

Master of Philosophy

GIDEON SHADANG



**CENTRE FOR POLITICAL STUDIES
SCHOOL OF SOCIAL SCIENCES
JAWAHARLAL NEHRU UNIVERSITY
NEW DELHI-110067**

2008



Centre for Political Studies
School of Social Sciences
Jawaharlal Nehru University
New Delhi - 110067, India

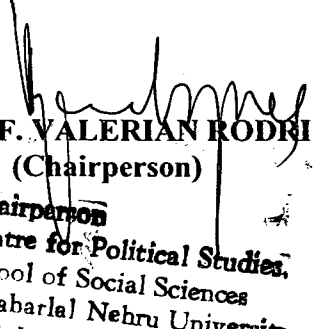
Tel. : 011-26704413
Fax : 011-26717603
Gram : JAYENU

Date: 29/07/2008


CERTIFICATE

It is certified that the dissertation entitled "**Rawlsian Conception of Justice: Understanding its Critics**" submitted by **Gideon Shadang** is in partial fulfillment of the requirements for the award of the degree of **Master of Philosophy** of this University. This is an original work, and has not been submitted in part or in full for any other degree in any University.

We recommend that this dissertation be placed before the examiners for evaluation.


PROF. VALERIAN RODRIGUES
(Chairperson)

Chairperson
Centre for Political Studies,
School of Social Sciences
Jawaharlal Nehru University
New Delhi-110067


PROF. GOPAL GURU
SUPER (Supervisor)
Centre for Political Studies,
School of Social Sciences
Jawaharlal Nehru University
New Delhi-110067

ACKNOWLEDGEMENTS

It was an immense comfort to have worked under the cerebral supervision of Prof. Gopal Guru, on whom I am indebted, the most to my completion of the dissertation. A person of his respectable knowledge was the only way that evened a rather ambitious pursuit to the topic, by a badly-informed pupil in the theoretical studies. Also, my work would have never known the last journey, without the empathetic support from the faculties of Centre for Political Studies, during the initial break down of my health on the very first step. Besides, the reflection on the dissertation to my academic interests and background was the highest education imbued from all the teachers of the Centre. Jawaharlal Nehru University has greatly taught me the way to this life. All I owe if it can be numbered, I would gratefully accept the blow of this knowledge centre.

My sincere thank also goes to my friends Soihiamlung, Heroka, Luikang, Paode, Yaronsho, Late Mikhael, Ayung, Phokmi, Moses and Maitree. Above all, I trust in God.

Dated: 27th July, 2007
New Delhi

Gideon Shadang
138, Kaveri Hostel

CONTENTS

	Page Nos.
Chapter I	1-12
Introduction: Rawls and the Social Science discourse	
Unfolding the History of Unity of Concept	
Reappraisal of the Concept of Justice	
Concept of Justice: The Test of the Time	
In Concluding Remarks	
Chapter II	13-28
Rawls's abstract ground of Justice	
Rawls's object of justice	
Communitarian's Discontent to Rawls's Conception of Justice	
Articulating the Subject of Justice	
Concluding remarks	
Chapter III	29-44
Rationality of Justice	
Rawls's Rational Constructivism	
Enquiring the Plurality Rationality	
Enquiring the Plurality Rationality	
Concluding Remarks	
Chapter IV	45-61
Rawls's Political Object	
The Boundaries of Plural Doctrines	
Rawls's Conception of Political of justice	
Critics to Rawls's Political conception	
Concluding remarks	
Chapter V	62-69
Conclusion: Major Challenges to Rawls's Subject of Justice	
Bibliography	70-72

CHAPTER I

INTRODUCTION: RAWLS AND THE SOCIAL SCIENCE DISCOURSE

Unfolding the History of Unity of Concept

We have experienced series of epochal revolution according to the outlooks of the human civilizations in relation to the changing natural phenomenon that directly produced an effect to the discourse of human sciences. In the mystic mythology of human lives, nothing was doubtful beneath the power of the almighty, but everything was understood in relation to the powers of "God". Purely central to the idea of God, things were defined and understood in its relation. However, notable revolutions like, heliocentric or Copernicus revolution broke the thread of myths and the consequent challenged to the authority of mystic views, usher to understand more closely the human society in its realistic nature. Thus, the subsequent development of romanticists influence over the human society vehicle to the imaginative reality of human beings. Which came to be understood either fully or partly the social nature of human society revolves on its self disposition to its imaginative pictures. One of the most popular novel of its heyday being "Don Quixote" by Miguel Le Cervantes, remain highly effective till its day of post-modern redescriptive genre. But, there was never as resonant as enlightenment period or age of reason that has been known in any ages of the development of the human sciences till today.

Enlightenment surges the search for central value(s) in which human society would universally adhere to it. It was the age of search for ground of rights, justice and equality. The search for central discourse in the social sciences became very important during the upsurge of industrial revolution in the western European countries. The concept of equality, liberty and justice came to be redefined in the contemporary structure of the society, thereto. Enlightenment introduced the centrality of reason, and created hypothetical truth of which every human being would accept. This bring forth the age of rationalism dwelling on the principles of unmovable truth. Mac Intyre argued the "enlightenment results to the introduction of rational justification by which alternatives

courses of action in every sphere of life could be adjudged, just or unjust, rational or irrational. So it was hoped reason would displace authority and tradition.”¹ Reason then, was understood as the central notion of search for truth and rights. Rational justification was to appeal to principles undeniable by any rational person and therefore independent of all those social and cultural particularities. Mark Cheney in his articles argues, from Gerwirth’s statement “the enlightenment brought the question of human rights against the traditional sources of authority, held to be grounded in superstition and untenable metaphysical doctrines.”² The impact of enlightenment rationalism reorganizes the understanding of the relations of human society on the rational understanding of person’s freedom. The person’s freedom to make his or her own life choices was put forward as an inalienable right. Therefore, Cheney argued “Descartes insists that appropriate use of reason reinforces the notion that individual is the final authority on question of truth. (Descartes) he firmly believed that the individual can strip away merely given fallible and historical character of material existence and discover the essential truths that lie beneath.”³

The protégé of enlightenment like, Emanuel Kant, Hegel, Descartes and Jeremy Bentham opens up a beginning of new epoch in the discourse of human sciences. The enlightenment brought the chapters of rationalist’s understanding of social realities, in connection to the development of modern world. The attempts to find unity, coherence and meaning into the social lives was the ultimate project of enlightenment rationalism. Emanuel Kant introduced freedom-based-reason. Upon which he constructed his theoretical foundation in an abstract identity of noumenal self. In the sense, self is free and rational. Kant’s philosophical foundation is firmly grounded in moral epistemology. For Kant, “the basis of the moral law is to be found in the subject, not the object of practical reason, a subject capable of an autonomous will. No empirical end but rather, a subject of ends, namely a rational being himself, must be made the ground for all

¹. Alasdair Mac Intyre, *Whose Justice, Which Rationality*, Gerald Duckworth & co. Ltd., London, 1988, P. 6

². Cheney, D. Mark, “Reason and Community: The Nature and Role of Reason in Politics, Social theory and Practice,” Vol. 25, No. 1, Spring 1999, P. 127

³. *Ibid*, P. 128

maxims.”⁴ Therefore, according to this what matters is not the end we choose but our capacity to choose them. This brings out the priority of the subject to its end. The understanding of Kantian morality emphasizes to create a framework for thinking about morality and, to put forth a theory of politics based in moral consideration derives from the framework. On the Kantian view, the priority of right is both moral and foundational.⁵

Hegel, however, found problematic with Kantian universal moral order. Taylor argues that Hegel provides a penetrating critique of some of the key assumptions, deriving from the Enlightenment, of traditional (and much contemporary) liberal doctrine—for example, its atomistic conception of the self, its supposed neutrality with respect to the human good, and so forth.⁶ Hegel’s critique of Kantian liberalism presents his distinction between “‘sittlichkeit’ and ‘moralität’.”⁷ Within this distinction, Hegel presented an objective definition of community based ethical life, rather than the subjective dictates of Kantian moral epistemology.

Nevertheless, Paul Franco argues, Taylor’s communitarian interpretation of Hegel’s political philosophy ultimately fails, in my view, by understating Hegel’s link to Enlightenment modernity. But, central to the interpretation of Hegel’s philosophy is the enlightenment idea of rational autonomy, rational freedom, which Hegel takes over from Kant and also Fichte.⁸

The debates on the definition of rights, equality and freedom among the liberals for years circle around Kantian moral epistemology and Hegelian community-ethical life.

⁴ .Michael Sandel, *Liberalism and its Limits of Justice*, Cambridge University Press, Cambridge, 2nd Edition, 1998, p. 6

⁵ .Ibid, p. 9

⁶ . Paul Franco, *Hegel and Liberalism*, in *The Review of Politics*, Vol. 59, No. 4, (Autumn, 1997), pp. 831-860 Published by: Cambridge University Press for the University, Notre Dame, URL: <http://www.jstor.org/stable/1408309> Accessed: May 14, 2008, P. 833

⁷ . Sittlichkeit or ethical life refers to norms embodied in a community, and describes any obligation *qua* participant to realize moral possibilities already there, implicit in a way of life. Moralität, by contrast refers to abstract principles as yet unrealized in a community, available to us *qua* individuals standing in radical opposition to community, See Also, Hegel’s Critique on Kant.

⁸ . Paul Franco, *Hegel and Liberalism*, op.cit., p.835

However, sooner than later Bentham's utilitarianism beliefs in the greatest happiness of the greatest number derived in the hedonistic philosophy gave a thumping challenge to the Kantian – Hegelian principles of deontological thought. The utilitarianism of Bentham introduced teleological principles, derivative of the maximization of the good.

Summarizing the Concepts of Justice

In the philosophical foundation of the above thinkers, the social science discourses has flourished over the years among the philosophers. The concept of justice, quite a central to the arguments of the philosophers in quest of defining values in social relations, it has gained major attention. John Rawls aptly put that justice is the first virtue of the social institution.⁹ Owing to its importance, Plato, one of the earliest Greek philosophers had also given "Concerning Justice" as a second title to his famous book "Republic". His book primarily circles around the concept of justice, in his dialogue with the sophists. Platonic conception of justice is established on the excellence of the soul. According to him "excellence is a kind of mental health or beauty or fitness, and defect a kind of illness or deformity or weakness."¹⁰ Plato gives no place for the selfish interest in his conception of justice. For him, "soul is tripartite, i.e. reason, spirit and appetite corresponding to the division of society as rulers, soldiers and peasants."¹¹ Justice consists in knowing its own profession and discharging its own duty without interference to others spheres. So, Plato's conception of justice prevailed in a state of freedom of every part to discharge its function freely. Justice as such is a coherent effort of the various organs through its sense of consciousness directed to the right ends. Platonic conception of justice also remains as the bond which holds society together in a harmonious union of individuals each of whom has found natural befitting skills and training. It is both public and private virtue that the highest good both of the state and its member is conserved. Platonic justice is a virtue of not only a just society but also a just person. Plato's justice "was a remarkable argument of ethical and moral conception that defeated the Sophist notion of justice as "interest of the stronger party."

⁹ John Rawls, *Theory of Justice*, Clarendon Press, Oxford, 1971, p.3

¹⁰ Plato, *The Republic*, Translated with an introduction by, Lee, Desmond (2nd ed.), Penguin Books, Cambridge, 1974, p. 134

¹¹ Ibid, Part v (Book iv)

In the much later century, like Plato, Kant's conception of justice follows the moral argument. However, his moral principles are general and universal. Within the foregrounding moral norms Kantian conception of justice is built on it. Kant's individual is abstracted as a noumenal self, rational, free, and moral. He believes man realizes his true self when he acts from the moral law, where as if he permits his action to be determined by sensuous desires or contingent aims, he becomes subject to the law of nature. Kant's interpretation based upon the notion of autonomy justifies the idea that liberty is acting accordance with the law that we give to ourselves.

In the 20th century writings on justice, John Rawls's "Theory of justice" (1971), built on the Kantian philosophical foundation, beliefs there are universal norms of conduct which individuals and group everywhere must abide. Taking the cue from the Kantian moral self, Rawls present all human being as a free agent with equal moral standing. In John Rawls's justice, we can deduce his aims under three points i) to established certain principles of justice as the rational choice of individual placed in a hypothetical situation in which they are ignorant of their personal qualities and their place in society, ii) to show that the principles thus chosen correspond to our considered judgment of justice and injustice; iii) to show that these principle can feasibly be adopted as a public conception of justice in a human society. Therefore, Rawls's two principles of justice chosen in the original position are the results of the above moral norms. Rawls's concept of justice is deontologically arranged in the Kantian premises, where the self is prior to the ends. The narrower interpretation is that right is prior to good. Rawls's in his book framed the choice of our good within the principles that is agreed upon in the original position. For him, the two principles of justice is an outcome of the foundational priority that allows the right to stand aloof from the prevailing values and the conception of good. Therefore, justice is the concept of fairness that arises between free, mutually self interested and rational person who has no authority over one another and do not coerce one another. Rawls advocates fair equality of opportunity in order to correct morally arbitrary inequalities and rejects meritocracy. He seeks to redefine the relationship between, liberty, equality and fraternity, as the cornerstone of a just society. This explains the

concept of justice as fairness. Justice as fairness is framed to apply to the basic structure of a modern constitutional democracy.

However, Rawls's well knitted philosophical concept of justice was challenged from different quarters. Among the popular critics, his colleague from Harvard, Robert Nozick questioned the validity of Rawls's distributive justice. Unlike Rawls, Nozick's entitlement theory is developed in one of the foremost precept of the natural law; man's right to the possession and use of his property. Mouffe states that, in the philosophical foundation of Locke's and Goldwater, Nozick questions "how can a man be free if the fruits of his labor are not his to dispose off, but are treated instead, as part of a common pool of public wealth."¹² Nozick designed to justify the existence of a minimal state, responsible for law and order and which entirely eliminates the redistributive function. Nozick's conception of justice is built on the plane of Thrasymachus; "justice is the interest of the stronger." Nozick's concept of justice assigns inviolable entitlement to individuals. He does not believe in social justice.

Nozick argues in his book, "patterned to distributions" allocative principles cannot be principles of justice.¹³ Inviolability entails ownership of one's own (physical, person) like Locke's ownership of one's labour. He is of the opinion, that "laboring on something improves it and makes it more valuable; and anyone is entitled to own a thing whose value he has created."¹⁴ Therefore, no objects can be made from nothing and that all titles to manufactured or freely transferred objects must derive from titles to natural and previously unowned objects. Nozick's theory of justice employs that voluntary disposition as the ground of entitlement to already owned objects that incorporate a rule for just initial acquisitions. So, according to Nozick, "a distribution is just if it arises from another just distribution by legitimate means. The legitimate means of moving from one distribution to another are specified by the principle of justice in transfer."¹⁵ But Rawls's

¹² . Chantal Mouffe, *The Return of the Political*, Verso Publication, London, 1993, p. 28

¹³ . Robert Nozick, *Anarchy, State and Utopia*, Published by Basic Books, Inc. 1974, p. 155

¹⁴ .Ibid, p.175

¹⁵ .The legitimate first 'moves' are specified by the principle of justice in acquisition, See also, Robert Nozick, *Anarchy, State and Utopia*, op.cit., P. 151

and Nozick's differing argument is primarily limited within the egalitarian and libertarian argument, while both the foundational basis of justice largely dwelled within the moral premises of Kantian philosophy. Nozick's inviolability of individual rights is derived from the underlying of Kantian principle that "individuals are ends and not merely means."¹⁶

Therefore, we direct our attention towards communitarian critics to understand the critiques to the Kantian foundation. The communitarian challenged the ahistorical and apodictic claims of the Kantian liberalism. John Rawls's book "A theory of Justice", with Kantian moral argument is seen as the basis of its deontological priority. The priority of rights in Rawls's assumes a certain meta-ethical status, that the right is derived independently from the good. Sandel claims, for Rawls as for Kant, the priority of the right over the good stands for two claims. "The first is the claim that certain individual rights are so important that even the general welfare cannot override them. The second is the claim that the principles of justice that specify our rights do not depend for their justification on any particular conception of the good life, or as Rawls has put it more recently, on any 'comprehensive' moral or religious conception."¹⁷

This foundational priority allows concept of rights to negate from prevailing values and conception of teleology. Therefore, Stuart Hampshire, in his book, professes his deep skepticism regarding matters on moral epistemology. This skepticism is directed at both the foundations and the horizons of political theorizing - according to him, "it was a mistake to look for a moral theory that could serve as a justifications or foundations of political loyalties and opinions where challenged did not any longer include or entail any generalisable account of a future ideal society or of essential human virtues."¹⁸ But, in the "A theory of Justice" Rawls's proposes a way of acknowledging a plurality of ends while affirming nonetheless a regulative framework of liberties and rights. However, in the opinions of communitarians like Taylor, Walzer and MacIntyre, Rawls's concept of justice lies primarily in the abstract self which justifies the priority of self to the ends. For

¹⁶ . Ibid. p. 31

¹⁷ . Michael Sandel, *Liberalism and its Limits of Justice*, op.cit., p. x

¹⁸ . Indebted to Stuart Hampshire, from his work *Justice is Conflict*.

them, the bases of rights are grounded within definite traditions, or rationality of traditions. Therefore, principle of justice certainly depends on the justifiable grounds of the conception of goods. Mac Intyre's appealed to the cultural hermeneutics of Heidegger and Gadamer, present an attempt to provide an account of rationality presupposed by an implicit in the practice of enquiry-bearing traditions. In his book, Mac Intyre traced the history of these traditions as distinctive "communities of discourse", "practices of enquiry" and "tradition-constitutive enquiry" from the Greeks to Modern liberalism, that introduce to a broader aspect of rationality in the public discourse of intellectual traditions.

Therefore, Mac Intyre look at the disputed question concerning justice and practical rationality and thus treated in the public realm not as matter for rational enquiry, but rather for the assertion and counter-assertion of alternative and incompatible sets of premises. Macintyre's rational enquiry embodied in tradition would find its rational justification that emerge from and are part of history within the tradition itself. And, as there are traditions of numerous entities his argument entails, there will be rationalities rather than rationality, just as there will be justices rather than justice.

However, this specific mode of rational justification is surely bound to create an inability to resolve radical disagreement. As Kymlicka stated, that "if understanding of justice are not shared, and there are no principles external to the culture to which they could jointly appeal (and whose decision they could jointly accept as binding) then there is no point arguing (for justice)."¹⁹ But, among the known communitarian, it is not the Kymlicka's political arrangement of multicultural citizenship but Sandelian critics of Rawlsian conception of justice is taken as a fundamental argument. Though, Michael Sandel disclaim his position from communitarian blog/block, he is of the opinion, "justice and the good in the sense is communitarian when principles of justice derived their moral force from values commonly espoused or widely shared in a particular community or tradition."²⁰ He questioned, in his book the fundamental ground of Rawlsian conception

¹⁹. Will Kymlicka, *Liberalism, Community and Culture*, Clarendon Press, Oxford, 1989, p.291

²⁰. Michael Sandel, *Liberalism and the Limits of Justice*, op.cit., p. 1

of justice, and argued that the justification of their rights depend on the moral worth or intrinsic good of the end they serve. Nonetheless, unlike the communitarian, he agrees with the priority of self to the end. He affirmed that “justice must be prior to the values it appraises.”²¹ But, for him this is epistemological rather than moral requirement. He argued “self as an end in himself, or simply self is prior to the ends- he regards human person as the bearer of a dignity beyond the roles that he inhabits and the ends he may pursue.”²² And foremostly for Sandel self must be prior to the ends it affirms – prior in the sense of independently identifiable – and this is what he called as an epistemological requirement.

However, Rawls in his book “Political Liberalism”, argues “the case for liberalism as political not philosophical or metaphysical, and so does not depend on controversial claims about the nature of the self.”²³ Rawls’s revised conception of justice is presented as a political conception of justice. Instead of philosophical foundation for principles of justice, political liberalism seeks the support of an “overlapping consensus.”²⁴ This aims to persuade people to endorse liberal political arrangements, such as equal basic liberties, for different reasons, reflecting the various comprehensive moral and religious conceptions they espoused. He is presenting political liberalism as a “free standing view”.²⁵

Concept of Justice: The Test of the Time

Rawls’s “A theory of justice” became a central book in the later part of the century, in the search for foundational discourse on human sciences. Thus, the question of rights, equality and justice took the centre-stage to create a coherence and unity of social sciences. It is the product of enlightenment discourse which universalizes ultimate discourse in the human sciences. However, enlightenment itself is not free from critics, but faces similar problems like any other theory about the nature of reason and truth. By the turn-over of World War II, the post colonial theory, subaltern theory, orientalist and

²¹ . Ibid, p. 16

²² . Ibid.

²³ . Ibid, Pp. 29-35

²⁴ . Ibid, p. 134

²⁵ . Ibid, p.10

the post modernist questions the universal category, and disclaimed as mere enlightenment dictates. Enlightenment project is accused of purely western outlooks which claimed authority over the social science discourses. The post modernist and post structuralist discourse became a popular perspective in the late 20th century which gave vehement critics to Rawlsian kind of meta-ethical discourse deeply linked to enlightenment traditions. Mouffe argues that “the enlightenment produce abstract universalism of an undifferentiated human nature.”²⁶ Post modernist engaged with the subject of specificities and particularities. Thitherto, people are beginning to lose their faith in science and rational thinking and that technology is beginning to fail us. There is no longer a belief in one single truth. There is no absolute scientific truth. There is no one correct perspective. Truths are multiple, fluid, changing and fragmentary. There is an emphasis and disorder, flux and openness, as opposed to order, continuity and restraint. The post modernist and the post structuralist disclaimed the authority of enlightenment which produced the totalitarian of reason. Rorty claims that “there is no central self called ‘reason’²⁷, but everything is to be understood in a contingent moment. Tentative thinking is the post modern way. Post modern society emphasizes on media, globalization, and freedom to choose your own identity and lifestyle. It began around the 1950s in America and in Europe around the 1960s.

Postmodernism sees that there is not one over-arching truth. Inequality is not restricted to one area but multi-faceted; ethnicity, gender, sexuality, religion. Our identities are not unitary based on one of these areas. We have fragmented, plural identities made up of all of them. Things are changing and variable. Social location is no longer a matter of class. Class has become less important. People do not feel as if they belong to ‘classes’ anymore. Supposed class grouping include a wide variety of different people. Ethnicity, gender and age are becoming more and more important. Inequality is an issue for almost everyone. Social behaviour is no longer shaped as it used to be by people’s background and their socialization. The argument centres around the factors like ethnicity, gender, age etc. are increasingly less influential. People are freer to choose their own identity.

²⁶ Chantal Mouffe, *The Return of the Political*, op.cit., p. 15

²⁷ Richard Rorty, “Contingency of selfhood,” *London Review of Books*, 17 April, 1986, Pp. 3-5.
p. 12

Although, the post modernist and post structuralist does not have its conception of justice, they have closely engaged against the Rawlsian conception of justice. In the words of Chantal Mouffe, “Justice is not only a question of interpretation and application of the criteria of distribution, but also the distinctions and the boundaries between the different spheres.”²⁸ It is about deconstructing the universal category, and articulations of the contingent identities. In her concept of “political”, argued in radical democracy, Mouffe however does not reject universalism but particularised; what she think is needed is the new kind of articulation between the universal and the particular. Rawls’s concept of justice is understood as a direct product of enlightenment philosophical foundationalism. Justice for Rorty is contingent. He insists discursivity of vocabulary, for him the liberty of individual is the primary basis of social cohesion. In his words, “freedom is the recognition of contingency and such freedom is integral to the idea of liberalism.”²⁹ In the writing of Foucault on knowledge and power relations, he argues against the generalised theory grounded, as such in the contractual traditions of Locke, Rousseau and Kant. He is one among the staunchest critics of modern institutions that coerced individual’s rights.

In Concluding Remarks

The Rawlsian conception of justice, undoubtedly appeal to numbers of respectable critics across the globe due to its logical and consistent arguments followed in all his series of writings. Although, the world has taken new turns of outlooks, Rawls’s formidable book has continued to be the central text to the philosophical investigations on the question of rights, equality and justice. It has not been a mere question to the Rawlsian conception of justice, but rather imploring upon the importance of the discourse of justice in the social science, many philosophers and scientists have engage to find a critical paradigm of justice. From this work, we have drawn out the significant questions raised in the communitarian critics and the contingent theory of the post modernist and radical discourse of discursivity to the Rawlsian conception of justice. However, strictly

²⁸ .Ibid, p.34

²⁹ .Ibid.

speaking, as the communitarian conception of justice is problematic in its own conception, and the discourse of discursivity failed to present the alternative conception of justice, we derives their critical standpoint to reformulate the concept of justice in the liberal conception. This is our attempt to eschew the Kantian *a priori* universalism and abstract identity of self. Also, in order to present the most accommodative democratic ideals of political institution. We have analysed the plausible alternative by investigating the conflicting concepts of justice in its critical studies.

CHAPTER II

RAWLSIAN ABSTRACT GROUND OF JUSTICE AND ITS CRITICS

Rawls's object of justice

The 20th century writing on John Rawls's "Theory of Justice" 1971, gave a major impetus to a revival of political philosophy, a discipline that had been pronounced moribund by some of its most distinguished practitioners a few years before. Theory of Justice led to a corresponding attempt to reinterpret the history of liberalism retrospectively in the light of his position. This had also produced to some distinguished results, that *Theory of Justice* represented a significant focus in a number of important respect of liberal thinking. However, as the title of the book indicates, he placed the concept of justice at the centre of attention. For him, 'justice' is the chief virtue of a social institution,¹ in which he organizes his political philosophy around a *Theory of Justice*.

Rawls established two principles of justice as the basic structure of society, which is the object of the original agreement of hypothetically original position. The original position is the initial status quo, whence, the person (representatives) are to choose principles that are free and rational concerning to further their own interests, behind the veil of ignorance. Rawls organizes his original position in such a way that the parties involves in the contract does not have any knowledge of their talents, history and skills, but a capacity to choose with the conception of good life and the conception justice. Consequently, the principles chosen in the original position would be accepted as the fundamental terms of their association and which would regulate all fundamental agreements; specify all social co-operation and forms of government that can be established. John Rawls calls these principles of Justice as fairness. According to Rawls, in the original position the person would choose the following two principles of justice, in the given circumstances.

¹ . John Rawls, *Theory of Justice*, Clarendon Press, Oxford, 1971, p.3

- i) Each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty to other.
- ii) Social and economics inequalities are to be arranged so that they are both a) reasonably expected to be to everyone's advantage and b) attached to positions and offices open to all.²

For him, the original position justified the chosen principles because they are chosen in the initial position where disagreement would not arise. His original position also yields a distinctive method of justifying the principles and conception of justice. The conception as totally based on justice as fairness where no persons are irrational but rational under fair condition.

Like, Kantian moral premises, Rawls's preference for principles of justice is derived from only the most general assumption about rationality and the condition of human's life. Kant moral principles are general and universal. He begins with the idea that moral principles are the object of rational choice, which made man to rationally will to govern their conduct in an ethical commonwealth. Kant based his interpretation upon the notion of autonomy. Kant believes man realize his true self when he acts from the moral law, where as if he permits his action to be determined by sensuous desires or contingent aims, he becomes subject to the law of nature.

In relation to the Kantian interpretation, Rawls' original position embodies persons as noumenal selves, which meant that persons are free, equal rational beings and hence autonomous. For Rawls, all human being is a free agent with equal moral standing. He borrowed the Kantian conception of being as independent of laws of nature capable of autonomy that set the priority of rights which does not depend on any of those moral or religious conceptions. He presented as a "freestanding view".³ Therefore, the original position may be viewed, then, as a procedural interpretation and justice as a categorically imperative. For him, justice is not merely one important value among others to be weighed and considered as the occasion requires but rather the means by which values

² . Ibid, p.60

³ . John Rawls, *Political Liberalism*, Published by Columbia University Press, New York, 1993, P.10

are weighed and assessed by it.⁴ It is in this sense justice is the values of values. Rawls said, each person possesses an inviolability founded on justice that even the welfare of society as whole cannot override.⁵ He gives primacy of justice to the general notion of the priority of right over good. The priority of right over good means that principle of right invariably out weighted consideration of welfare or the satisfaction of desire, in opposition to utilitarian doctrines but comes ultimately to assume a certain meta-ethical status, as well as the priority of right means that of the concept of ethics, the right is derived independently from the good rather than the other way. This foundational priority allows the right to stand aloof from prevailing values and conception of teleology.

Rawls also asserts another deontological priority, what is morally essential to our personhood is not the end we choose but our capacity to choose them, and this capacity is located in a self, which must be prior to the ends it chooses. For the self is prior to the end is also affirmed by it. The parties in the original position regard moral personality and not the capacity for pleasure and pain as the fundamental aspect of the self. The main idea is that, given the priority of right, the choice of our conception of the good is framed within definite limits in the light of the moral personality. The deontological account of the unity of the self is the notion of the human subject as a sovereign agent of choice, creatively, whose ends are chosen rather than given. Thus, the subject is a moral person with ends or preferences, trying to attain through principles chosen under the condition that expresses his nature as a free and equal rational being in where circumstances fully permits. Therefore, the two principles of justice is an outcome of the moral person subjected to ends, i.e. justice as fairness, where, thereby, the formulation is being undertaken. In relation to the deontological studies of Rawls' conception of Justice the choice of our good is framed within definite limits, provided they are principles that is agreed upon in the original position.

Communitarian's Discontent to Rawls's Conception of Justice

⁴ . Michael Sandel, *Liberalism and the Limits of Justice*, Cambridge University Press, Cambridge, 2nd Edition, 1998, p.16

⁵ . John Rawls, *Theory of Justice*, op.cit., p. 3

Rawls among other liberal thinkers believes there are universal norms of conduct, which individuals and group everywhere must abide. According to Sandel, “whether egalitarian or libertarians, right based liberalism begins with the claim that we are separate, individual persons, each with our own aims, interests, and conceptions of the good, and seeks a framework of rights that will enable us to realize our capacity as free moral agents, consistent with a similar liberty for others.”⁶

Sandel in his “liberalism and limits of Justice” challenged the claims of Rawls’s principles of justice that specify our rights do not depend for their justification on any particular conceptions of good life. He is of the opinion, that justice and the good in the sense is communitarian, that principles of justice derived their moral force from values commonly espoused or widely shared in a particular community or tradition.

Sandel argues the justification of their rights depends on the moral worth or intrinsic good of the end they served. He held the opinions that justice is not simply about “of all morality” but also about the foundations of morals. It concerns not just the weight of the moral law, but also the means of its derivations. That the concept of good and evil for him, is not defined prior to moral law, but the latter served as foundation to which justice gains its primacy. Sandel’s argument can be understood to state that, the very moral personality of Rawls’s is derived from certain moral background. That background necessarily gives its outlook to the conception of justice justified on the notion of good derived from the moral background.

Sandel explores, Rawls’s appeals to Kantian basis of moral law which is to be found on the subject not the object of practical reason, a subject capable of autonomous will. No empirical end but rather “a subject of ends”, namely a rational being himself, must be made the ground for all maxims of actions.⁷ Therefore, according to this what matter is not the end we choose but our capacity to choose them. Thus, Rawls’s priority of the subject to the end is derived in the above premises.

⁶ . Michael Sandel, *Liberalism and its Critics*, Basil Blackwell Publisher Ltd., 1984, p. 4

⁷ . John Rawls, *Political Liberalism*, op.cit., P. 6

The priority of the self over its end means I am never defined by my aims and attachments, but always capable of standing back to survey and assess and possibly to revise them. This is what it means to be a free and independent self, capable of choice.⁸ This also means that right is prior to good.

The fundamental reason of the conception of unencumbered self lies in the Rawls's hypothetical construction of original position. Rawls's original position in part III of "A theory of Justice" provides justification through the Kantian conception of the person. The parties involved in the original position are free, moral and rational beings, with the capacity to choose which is good for one and all. But, as Sandel argues that if our capacity to choose our ends, particular ends we choose, if "i(t) is not our aims that primarily reveal our nature but rather the principle that we would acknowledge to govern the background conditions under which these aims are to be formed, if "the self is prior to the ends which are affirmed by it"⁹, then thinking about justice from the standpoint of a person deliberating prior to any knowledge of the ends they may pursue, will necessarily have background knowledge. According to which – their identity is fixed prior to – their ends, or values, or conception of good. In the opinion of Rawls, original position could only mean to bring just argument about the distribution of social goods reached behind the veil of ignorance. The original position is rather designed to model the normative claim that it is appropriate to exclude certain considerations or reasons when it comes to thinking about social justice. According to Mulhall and Swift, for Rawls the constraints of the original position are thus epistemological and moral rather than metaphysical; they reflect Rawls's view that justice requires that people be treated as equal and free.¹⁰

Rawls borrowed Kant's Moral construction. Kant in his moral construction of concept of justice offers two arguments in support of his notion of the subject – one epistemological, the other practical. Both are forms of transcendental arguments.

⁸ . Michael Sandel, *Liberalism and its Critics*, op.cit., p.5

⁹ . Ibid, p.560

¹⁰ . Stephen Mulhall and Adam Swift, "Rawls and Communitarian", Samuel Freeman, (ed) *Cambridge Companion to Rawls*, Cambridge University Press, Cambridge, 2003, P. 464

The epistemological argument inquires into the presupposition of self – knowledge. Kant argues that one cannot claim to know what he is in himself through self knowledge, because beyond the character of himself as a subject made up as it is, of mere appearance there is something else which is its ground – namely his ego as this may be constituted in itself. According to him, it is the subject that unifies our diverse perceptions and holds them together. The discovery is that I must understand myself as a subject as well as an object of experience. Thus, the epistemological argument leads to practical arguments for priority of subject.¹¹

For him, man as being independent of the laws of nature, capable of autonomy and regard myself as free, we cannot think of ourselves as merely empirical beings. When we think of ourselves as free, we transfer ourselves into the intelligible world as members and recognize the autonomy of will. On the Kantian view, the priority of right is both moral and foundational.¹² Thus, it is grounded in the concept of subject given prior to its ends. And the rights secured by justice are not subject to the calculus of social interest but instead function as a “trump Card” held by individuals” against policies that would impose some particular vision of the good on society as whole.¹³

Grounding Kantian subject, Rawls put the basis of the principle of justice that governs the basic structure of society on our best understanding of the highest human ends. Sandel’s argument follows a question that a subject can never have ends which are not constitutive of his identity and this denies him of participation in a community where it is the very definition of who he is. This also further raise a difficult question: on what reason do we pursue to insist on our reflection about justice without reference to our purpose and ends?

Sandel also extensively elaborates sociological perspectives against Kantian view – that the liberal’s claim for neutrality is impossible because all political order embody some values. Taylor feels the insistence on neutral political concern is its primary feature of liberalism that eschewed the conception of the good. Taylor believes that “political

¹¹ . Michael Sandel, *Liberalism and Limits of justice*, Op.cit., p.8

¹² . Ibid, p. 9

¹³ . Ibid, p. 10

institutions governed by the principle of neutral concern will empirically, be incapable of sustaining legitimacy, and hence will be incapable of sustaining the culture of freedom.”¹⁴ Taylor also feels that, “of late, the ‘legitimation crisis’ faced in the western liberal democracy is arisen because the welfare state is demanding more from its citizens, but the citizens no longer see the state, and political community generally, as the focus of any identification or allegiance.”¹⁵ But this identification has been undermined, in part because we now have a political culture of rights in which individuals are free to choose their goals independent of this ‘common form of life’, and to trump the pursuit of this common good, should it violate their rights. Therefore, for Sandel, the priority of the subject only would mean the priority of the individuals that is likely to give rise to conflicting claims. However, later Rawls produce neutrality of aim as opposed to neutrality of procedure by meaning that those institutions and policies are neutral in the sense that they can be endorsed by citizens generally as within the scope of a public political conception.

Communitarians, in an Aristotelian sense argued that we cannot justify political arrangement without proper conception of our personhood in reference to our role as citizens and participants in a common sense. This means we can not conceive of ourselves detached from our aims and attachments. They say that certain of our roles are partly constitutive of the persons we are – as citizens of a country, or members of a movement, or partisans of a cause.¹⁶ MacIntyre’s narrative conception of the self constituted in certain telos argued, my identity is not independent of my aims and attachment, but partly constituted by them; I am situated from the start, embedded in a history which locates me among others, and implicates my good in the good of the communities whose stories I share.¹⁷ For the communitarians like Taylor, MacIntyre and Sandel, there is no transcendental subject capable of standing outside society or outside experience.

¹⁴ . Will Kymlicka, *Liberalism, Community and Culture*, op.cit., p.81

¹⁵ . Ibid

¹⁶ . Michael Sandel, *Liberalism and its Critics*, op.cit., p.6

¹⁷ . Ibid, p. 9

However, Rawls's in order to avoid the Kantian transcendental understanding of subject incorporated Humean understanding of human situation to eschew with abstract conception of Kantian subject that suffers from obscurity and arbitrariness, adopted his hypothetical (condition) to yield determinate outcome fit for actual human being. According to Freeman, Rawls rejects Kant's dualism, he does not suppose principles of justice are a priori or based in "pure practical reason" alone. Human nature and the fixed empirical conditions within which practical reason is normally exercised are relevant to discovering and justifying principles of justice.¹⁸ Thus, according to Freeman, Rawls move some way toward the more "sentimental" and "naturalistic" accounts suggested by Rousseau and Hume.¹⁹ However, Sandel opines that the deontological liberalism cannot be rescued from the difficulties associated with Kantian subject. For him, Rawls's attempt to situate the deontological self, properly reconstructed carries us beyond deontology to a conception of community that marks the limits of justice and locates the incompleteness of the liberal ideal.

Sandel explores Rawls's Archimedean point from which he assessed the basic structure of society. Sandel identified the problem in it, according to him, if the principles of justice are derived from the values or conceptions of the good current in the society there is no assurance that the critical standpoint they provide is anymore valid then the conceptions they would regulate. Since as a product of those justice would be subject to the same contingencies.²⁰ Michael Walzer also joined Sandel against Rawls's archimedean position, he opines that one must stay in the assumed status, as a member of a particular community, and interprets for its citizens the world of meaning they have in common.²¹

Nonetheless, Sandel approves of the primacy of justice, and identifies another point in which justice must be prior to the values it appraises, and this for him, is epistemological

¹⁸ . Samuel Freeman, *Cambridge companion to Rawls*, op.cit., p. 2

¹⁹ . Ibid, p.2

²⁰ . John Rawls, *Political Liberalism*, op.cit., P.16

²¹ . Walzer's goal is to realize what he calls a complex equality – this requires that different social goods be distributed, not in a uniform manner but in terms of a diversity of criteria which reflect the diversity of those social goods and the meaning attached to them. Equality is a complex relationship between persons mediated by a series of social goods; it does not consist in an identity. See also Michael Sandel, *Liberalism and the Limits of justice*, op.cit.

rather than moral requirement.²² His argument of self as an end in himself or simply self is prior to the ends he regards human person as the bearer of dignity beyond the roles that he inhabits and the ends he may pursue. Foremost and, for Sandel self must be prior to the ends it affirms – prior in the sense of independently identifiable – and this is what he called as an epistemological requirement.²³

*He argues that self is not simply the concatenation of wants, desires and ends. If it is, according to him, slight change of situational would blur the identity of self. Without some distinction between the subject and the object of possession, it becomes impossible to distinguish what is 'me' from what is 'mine'.*²⁴

However, for Rawls our individuating characteristic are given empirically by the distinctive concatenation of wants, desires, aims and attributes purposes and ends that come to characterize human beings in their particularity. Each individual is located uniquely in time and place, born into a particular family and society, and the contingencies of this circumstance, together with the interests and values and aspirations to which they give rise, are what set the particular persons they are. The essential idea of this is to accord plurality of individual of which the contract is entered in the original position among different individuals.

But Sandel argues we are distinct person, from which the conflict of interest arises as we have seen, from the subjects of co-operation having different interests and ends. Therefore, the epistemological question of what our ends consist in, and whether they happen to coincide or overlaps with the ends of other, which cannot be known in advance set the nature of being capable of justice. It concerns the nature of the self that is, how it is constituted, how it stands with respect to its situation generally, not the nature of the self's desires or aims.

Sandel put two principal quarrels with Rawls's liberalism: first that the good is not simply chosen but is discovered through reflection, and second that individuals are not

²² . Michael Sandel, *Liberalism and the Limits of justice*, op.cit., p.16

²³ .Ibid, p.20

²⁴ . Ibid, p. 20



radically separated and individuated but are, in fact, constituted by their role in community. Sandel speaks of a self constituted by the shared good of a particular community, a good discovered by reflection. The suggestion that a person's identity extends beyond his physical body to those with whom that person shares common goals is sufficiently obscure that one can sympathize with Rawls's rejection of it or reasons of clarity among others.

He contends that, following Kant, Rawls can justify the primacy of abstract justice only by appealing to an unacceptable ideal of the person as disencumbered of natural and social circumstances and so prior to its ends and values.

Sandel argues Principles of justice which presuppose no particular conception of the good entails that we locate our deepest commitments or "self understanding" antecedent to any particular conception of the good. Once we recognize that our personhood must be in part constituted by a commitment to some conception of the good life he states, "we will grasp that the political order, too, must subordinate justice to that higher more substantive ideal."²⁵

Sandel's argument is that conceiving of personhood along the lines of self prior to its ends ignores the phenomena of characters and, of the inter-subjective constitution of the self. He insists, for example, that fostering abstract justice as the primary political virtue may sacrifice existing sentences of general benevolence or fraternity. Rather, we must regard ourselves, not as disencumbered self, but as persons constituted at least in part by some conception of the good we share with the other members of our community.

Will Kymlicka didn't think likewise, but for him though there are differences between Sandel and Rawls on the boundaries of the self, however both accept the priority of person to her ends. As for Rawls, for Sandel that the person can re-examine her ends and revised for the best of her interest. Therefore, the question that would posed to Sandel is, if the self is prior and at the same time constitutive conception of good, how might Sandel's make the distinct boundary to limit the overlapping of the two confusing

²⁵ . Ibid, p.53

boundaries. Therefore, Kymlicka is of the view that so long as a person is prior to her ends, then Sandel has failed to show “why the liberal view of the self is wrong, and hence why liberal political morality is wrong.”²⁶

Nevertheless, Kymlicka opined that Rawls’s proposed liberal democracy defended by plurality and mutual respect do not seem sufficient to defend the full range of liberal freedom, and “Rawls has not yet explained how he would defend these broader aspects of freedom of association to people with constitutive ends.”²⁷ Therefore, the Kantian liberals are accused of having untenable account of morality as transcultural and ahistorical.

Articulating the Subject of Justice

In “The Return of the Political”, Chantal Mouffe carries her argument through the critiques to the essentialist projection of the unity of identity, impregnated in the consequence of the Kantian hypothetical conception of subject. However, Mouffe is equally against the communitarian’s idea of common good. Mouffe argues that “the communitarian politics of the common good based on shared moral values is also incompatible with modern democracy because it leads to a pre-modern view of the political community as organized around a substantive idea of the common good.”²⁸

She begins from deconstructing the very essential identities as the prerequisite condition for understanding the variety of social relations where the principles of liberty and equality could apply. In her study of the identity of self, Mouffe discarded the notion of subject as the supposed unity of homogeneity, in order to find the position to theorise the multiplicity of relations of subordinations. Her studies to the identity of subject present the relations of subordination and over determination. According to her, “a single individual can be the bearer of this multiplicity and be dominant in our relations while subordinated in another”.²⁹ She conceive the “social agents as constituted ensemble of subject positions, that can not be totally fixed in a closed system of differences, constructed by a diversity of discourses among which there is no necessary relations, but

²⁶ . Will Kymlicka, *Liberalism Community and Culture*, op.cit., P.56

²⁷ . Ibid, p.60

²⁸ . Ibid, p.77

²⁹ . Chantal Mouffe, *The Return of the Political*, op.cit., p. 77

rather a constant movement of over determination and displacement.”³⁰ The “identity” of such a multiple and contradictory subject for Mouffe, is always contingent, precarious and temporarily fixed at the intersection of those subject position and dependent on specific forms of identification.

She approached to understand the social agent as a plural, dependent on the various subject positions of its discursive formations, rather than unified, homogenous entity. She argues “there is no a priori necessary relation between the discourses that construct its different subject position.”³¹ However, Mouffe will not deny the necessary link between subject positions, which according to her would be through articulation.

Mouffe, therefore, theorise the individual differently from both the communitarian and the liberals, the conception of self neither embedded nor unencumbered, but social agent a site constituted, by an ensemble of ‘subject positions’, present in a multiplicity of social relation. This particular perspective of discursive identities can be also seen from the writing of Rorty. Rorty, in his contingent theory, following the Freudian perspectives opined that “there is no central self called ‘reason’.”³² He enunciated the Freudian “self as a tissue of contingencies rather than a well ordered systems of faculties. Freedom as such is the recognition of contingency and such freedom is integral to the idea of liberal.”³³

Rorty, disclaim the notion of abstraction of self in the Kantian perspective which introduced transcendental categories, and tabooed autonomy of individuals. Rorty’s identification of self is not merely against the Rawlsian kind of abstraction; however, he is also against its string attached to the communitarian definition of self within the located condition. According to him, “what was needed, and what the idealist were unable to envisage, was a repudiation of the very idea of anything – mind or matter, self or world – having an intrinsic nature to be expressed or represented.”³⁴

³⁰ . Ibid.

³¹ . Ibid, p.77

³² . Richard Rorty, *The Contingency of Selfhood*, op.cit.,p. 12

³³ . Ibid, p. 12.

³⁴ . Richard Rorty, “The Contingency of Language”, *London Review of Books*, 17 April, 1986, pp. 3-5, p. 3

Rorty proposed metaphorical understanding of our knowledge through contingent re-description of each moment in our own language suited to our society than the ways which is left over from the older institutions and practices. Therefore, in the Rortyan sense, the creation of self independent to his background would be a blunder, but the very sentence of self within the locus of condition would define his justification on rights. Rorty enunciated vocabulary which revolves around the notions of metaphors and self creation rather than around the notion of truth, rationality and moral obligation which he claimed is much suited to our societies. In his argument, “the culture of liberalism is enlightened secular, where no trace of divinity remains, in the form of either a divinized world or divinized self.”³⁵

Another critiques of enlightenment universalism, Michel Foucault produced an argument of relational ontological identities, instead of simply looking at the behavioural identity. For Foucault, in his study to the modern development of power, from the 19th century upto our own day has characterize “to the strong social disciplinary coercion through legislation, a discourse based on public right, whose principle of articulation is to assure the cohesion of each citizen in the same social body.”³⁶ According to him, the modern state organized within the subjectivised concept of totality, does not arise above the individual but on the contrary created very sophisticated structure, in which individuals can be integrated, under one condition: that this individuality can be shaped in a new form and submitted to a set of very specific pattern.”³⁷ Foucault’s argument can be located in the critique of modern institution, which is the result enlightenment rationalism.

From the impression of Foucault’s argument, we can appeal to the critiques of Rawlsian abstraction of individuals subjected in the modern structure. Therefore, Foucault, resistance arises from the refusal to the abstraction of individuals in the modern

³⁵ . Ibid.

³⁶ . Foucault opines that the political structure in the form of the state envisioned as; a kind of political power which ignores individuals, looking only at the interests of the totality, or of a class or a group among the citizen. For him, the state is both an individualizing and totalizing form of power. This is due to the fact that the modern state has integrated in a new political shape of an old power technique which originated in Christian institutions, known as “pastoral power”. Also see Michel Foucault, “The Subject and Power”, in Steven, Lukes (ed), *Power*, p.222.

³⁷ . Ibid.

institutions. That ignores our individuality and inquisition to what determines us, or against that ties the individual to himself and submit him to others in this way. Foucaultian freedom can be realized only when there is free from subjection. The ideas of Foucault usher us to learn the subjective knowledge/power relation against the abstracted discipline of the traditional understanding of power that operates in our discourse of social relations. Which is radically oppose to Rawls's modern project that the "theory is an attempt to generalize and carry to higher order of abstraction the traditional theory of the social contract represented by Locke, Rousseau, and Kant."³⁸

Concluding remarks

Kantian Conception of being as independent of laws of nature, capable of autonomy that set the priority of rights which does not depend on any of those moral or religious conception, embedded in the Rawlsian foundation of the conception of justice has involuntarily appeals to the critiques of different schools of thought. However, we have also learnt that, the Kantian philosophical foundation is not simply challenged by the critics in the light of Rawlsian conception of justice. But, known as before, pre-Rawlsian liberals also had made similar objections to Kant.

First of all, the concept of the a priori, which is structurally indispensable for all forms of Kantianism, is not acceptable to liberals. Kant's abstract conception of reason (which can in some sense be seen as the source of his doctrine of the a pri-ori) constitutes an attempt to absolutise accidental forms of thinking that hap- pen to be socially important at some particular time, and thus to freeze human development at some given level. Second, although both Kant and classical liberalism are committed to the value of freedom, their respective conceptions of freedom are radically different. Most liberals are highly suspicious of Kantian freedom-based-on-reason and, in fact, strongly suspect that this 'positive' conception of freedom can be used to jus-tify forms of totalitarianism.³⁹

But rejecting the Kantian deontological liberalism does not necessarily lead us to accept the communitarian conception of an embedded self or Hegelian political morality defended by reference to the shared values of a particular historical tradition and

³⁸ . John Rawls, *Theory of Justice*, op.cit., p.viii

³⁹ . Raymond Geuss, "Liberalism and Its Discontents", *Political Theory*, Sage Publications Inc. Vol. 30, No. 3, Jun., 2002, p. 325.

“interpretative community.”⁴⁰ As Mouffe argues, the communitarian conception of self organized around the substantive ideas of the common good is incompatible in the modern democracy. Because, as Rawls identified the presence of comprehensive plural doctrines yet reasonable will end up in conflicting situation. Therefore, we can attempt to reformulate Sandelian conception of self, which stand prior to the end but constitutive of the conception of good, in the sense Sandel’s self at least stand in relation to social conditions.

However, taking note of Kymlicka’s argument against Sandel’s conception of self, we can re-problematise how exactly we define the self constitutive of social condition, prior and (distinct) to its ends. But, Kymlicka seems to have failed to read Sandel’s argument adequately. Understanding Sandel as a communitarian, constitutive self would mean to say that self is historically given with its background condition. And its priority of the self to the ends would mean that self would choose the principles of justice from the position of the historically given context.

However, Sandelian conception of justice argued from the understanding of the priority of self, but constitutive of social conditions will not escape itself from testing its validity. Sandelian conception is not free from conflict, as the pluralism of doctrines is destined to result different constitutive self, for which Rawls has argued in the “overlapping consensus”. And, if the constitutive self is historically given, the end itself would reflect historically given judgment, without having any revisable autonomy. Therefore, Sandel’s ends itself will not be free from historically given context of constitutive self. It is in the sense; Sandelian priority of self to the ends is not convincing enough as Kymlicka claims.

At the same time, if Sandel’s justification of the concept of justice would depend on the rights delineated through the conception of the moral importance of the end they serve, it certainly will lead to teleological arguments. Because, the self which stand prior to his end, and the end chosen on the moral importance of the end they serve, will results to the

⁴⁰. Hegelian liberalism start with our intuitions and institutions, our shared values and community standards; Kantian liberals, on the other hand, start by fashioning an objective and ahistorical standpoint, and ask what is valuable from there.

assessment of conception of good it awaited at the end. Therefore, priority of self to the ends has to be reformulated.

As far as the post modernist discursive discourse is concerned the self would be defined on its contingent moment, yet, we must be aware of the social nature of self which communitarian advocates. From the argument of Sandel, we can find if the self is defined with the simple concatenation of desires, goals and actions of particular contingent moment, then, slight change of the situation would lead to the alteration of the identity of self. Therefore, Rorty's conception of contingent self and discursive articulation of Mouffe's identity also must be studied from the nature of autonomy of self distinct to the flux of social condition. The proposal of Mouffe, locating the universality in particularity will not necessarily lead us to justify the principles of justice. As a result, she has debunked the need of the conception of self in social theory, but understood justice as the language of assertion and articulation.

However, we are also skeptics to the discourse of assertion and articulation located within the universalism of particularity. For the simple reason, this discourse also will certainly lead to the sophist pedagogic conception of justice as the interest of the stronger. It is likely that the person or the society with a weaker capability of articulation and assertion would fall prey within the language of more capable assertive and articulative person or society.

Therefore, in the difficulty of ongoing cyclical counter-argument on the concept upon concept, problems upon problems, we have to redirect our attention on our initial queries to the medium of our approaches and understanding. Reason as central to our understanding, which attains its authority over other mediums in the surge of enlightenment modernity has to be initially grounded in the plausible methodology, if unavoidable as a medium of assessment for understanding.

CHAPTER III

RATIONALITY OF JUSTICE

Rawls's Rational Constructivism

In his entire philosophical engagement, Rawls, assumed that the person in the original position are rational. Even till his latter work, "The Law of the Peoples: The idea of public reason revisited", Rawls conceived of liberal democratic peoples are both reasonable and rational. As most of the liberal believes in the primacy of rationality, Rawls build his argument in the rationality of the parties involved in the original position.

For Rawls, "rational person is thought to have a coherent set of preferences between the options open to him... he follows the plan which will satisfy more of his desires rather than less, and which has the greater chance of being successfully executed."¹ Rawls' concurs Sidgwick's deliberative rationality which "characterizes a person's good on the whole as what he would desire and seek if the consequences of all the various courses of conduct open to him were, at the present point of time, accurately foreseen by him and adequately realized in imagination. Therefore, an individual's good is the hypothetical composition of impulsive forces that results from deliberative reflection meeting certain conditions."² Rawls believes that the rational plan for a person is the one which he would choose with "deliberative rationality".³ Rawls's rationality invokes here is rather the standard familiar in the social theory. Rawls, assumed a well ordered society, in which his later books extensively emphasized on toleration on the ground of rational plan of life and freedom of choice.

¹. John Rawls, *Theory of justice*, Clarendon Press, Oxford, 1971, p. 143

². Ibid, pp. 416-417

³. However, Rawls thinks a rational person will not usually continue to deliberate until he has found the best plan open to him. Rational deliberation is itself an activity like any other, and the extent to which one should engage in it is subject to rational decision. The formal rule is that we should deliberate upto the point where the likely benefits from improving our plan are just worth the time into account. Ibid.

Rawlsian notion of Rationality can be best elaborated by delineating the Nozickean conception of Rationality. According to Nozick, “there are two type of rationality that permeates philosophical literature. First, rationality is the matter of reasons... that has some other desirable cognitive virtue, such as explanatory power. Second, that rationality is a matter of reliability. A rational belief is one that arises through some process that reliably produces that is true (or that have some other desirable cognitive virtue).”⁴ Because, in the Nozickean understanding reason is so central as it led to believe something is true, and belief is equally important because in this world of constant change and flux, it helps to ascertain local environment in tandem to our reason for adaptive mechanism to responds to local circumstances. Thus, Nozick relies on the scientific standards as a necessary to ascertain the local condition. Nozick believes that “reason is quite situational and contextual in producing scientific standards different from one another. Nozick put, rationality itself is biased...although rationality is not objectionably biased in its aim towards the goals it pursues.”⁵

We can see the similar position in Rawls that he himself believe the value of activity we should expend making decisions that will depend like so much else on circumstances, but unlike Nozicks, Rawls produce neutrality of aims as opposed to neutrality of procedure. Meaning, those institutions and policies are neutral in the sense that they can be endorsed by citizens generally as within the scope of public political conception. Rawls, as Nozick, prioritize the necessity of principle bound social order. In the words of Nozick, “men are rational creature that gives itself law; being a lawmaking member of a kingdom of ends, being an equal source and recognizer of worth and personality; being a rational, disinterested, unselfish person; being caring; living in accordance with nature; responding to what is valuable; recognizing someone else as a creature of God.... (he) follows through the Kantian tendency that principles function to guide the deliberation and action of self conscious, reflective creatures.”⁶ He explains that the principles transmit the utility of

⁴ . Robert Nozick, *The Nature of Reason*, Princeton University Press, New Jersey, 1993, p.64

⁵ . Ibid, p. 106

⁶ . Ibid, p. 29

action. Rawls follows Kantian reason based on freedom, in which the social principles are organized.

In this background of Kantian premises Rawls's constructed a principles bound social order, where every rational person would abide. As for Nozick, Rawls's Principles are also an expression of our rational nature constitutive of rationality. Principles are used as devices for reaching correct decision and using them to constraints the influence of undesired or irrelevant factors, such as personal preference. Rawls assumed the outcome of the contract will be that principles, which he called Justice as fairness. Which is entered by the rational being concern to further their own interest, accepts in the initial positions, the fundamental terms of their contract, which would regulate all fundamental agreements: specify all social co-operation and forms of government that can be established.

Rawls feels that the parties involves in the original position are free from envy which is disadvantages to all, and he assumed that they are neither liable to various other feelings such as shame and humiliation. However, Rawls's malice towards feelings and emotions on his rational constructivism has been challenged by the Feminist. In the writings of Martha Nussbaum, she emphasizes the defending of the feminist on emotions and relationship as important element of both ethical and political life. Feminist argued that "Kantian bias against emotion should not pervade the point of view of you and me. Such bias would exclude the consideration of feminist arguments that show emotions to be intelligent and discriminating ways of considering reality."⁷

But Rawls's understanding of the social reality conceived within the frame of his hypothetical original position simply believe the parties as moral, rational and capable to have conception of good within the frame of definite limits. As According to Rawls, "the constraints on conception of the good are the result of an interpretation of

⁷ . Martha Nussbaum, "Rawls and Feminism", Samuel Freeman, Freeman, Samuel (ed), *Cambridge Companion to Rawls*, Cambridge University Press, Cambridge, 2003, p. 49

the contractual situation that puts no prior limitations on what men may desire.”⁸ Like Kant, Rawls assumed that the first major embodiment of his idea is a theory of justice which has two primary aim i) to create a framework for thinking about morality ii) to put forth a theory of politics based on moral considerations derived from the framework. He believes in the idea that moral principles are the object of rational choice, which made man to rationally govern their conduct in an ethical commonwealth. The preference for the primary good is derived, than, from only the most general assumptions about rationality and the conditions of human’s life. This principle of justice covers all persons with rational plans of life. Therefore, Rawls in the very initial position set to create a framework to improvise a principle based social order. According to O’Neill “original position is a constructive procedure which conceives of the parties who construct principles of justice under particular abstract descriptions, namely, as lacking all knowledge of their own distinguishing social features.”⁹

In this analytical construction, the procedure whereby principles are proposed and acknowledged can be taken to represent the constraints of having morality. In one of the passage, Rawls remarks that to understand fair principles of justice as the object of agreement among free and rational persons entails seeing that ‘the theory of justice is a part, perhaps the most significant part, of the theory of rational choice.’¹⁰ Yet, the parties in the original position are describe as deliberating in accord with the rational choice, the conditions that Rawls imposes upon their choice through “veil of ignorance”, constitute moral limits on the sorts of information it would be fair for them to utilize. Therefore, Larmore suggest that, “this formulation wrongly suggests that fairness derives from the rational pursuit of individual advantage, when in reality it forms an irreducible moral notion.”¹¹

⁸ . John Rawls, *Theory of Justice*, op.cit., p. 254

⁹ . Onora O’Neill, “Constructivism in Rawls and Kant,” in Samuel Freeman (ed), *Cambridge Companion to Rawls*, P.351

¹⁰ . John Rawls, *Theory of Justice*, op.cit., p.16

¹¹ . Charles Larmore, “Public reason,” in Samuel Freeman (ed), *Cambridge Companion to Rawls*, p.369

However, the emphasis on a person who has morality expressed in his thought and conducts gives an acceptance of general and universal principles, which restricts the pursuit of his own interest, he feels that this condition forces to take the good of others into account. He regards these principles as conclusively binding on himself as well as on others, in virtue of his and their nature as human persons. The two principles of justice are those which would be acknowledged when the constraints of having morality are imposed on rational persons in circumstances which give rise to a question of justice, since the fundamental structure of the social system is the most important subject of structure of the social system, and the most important on a question of justice.

As Rawls's original position embodies a person as a noumenal self (persons are free, equal rational beings and autonomous). They are not guided by any prior, or antecedent principles of right and justice as can be seen by the use of pure procedural justice, and they are moved by the highest order interest in moral powers and their concern to advance their determinate but unknown ends. The subject for him is a moral person with ends or preferences, trying to attain through principles, chosen under the condition that expresses his nature as a free and equal rational being in circumstances that fully permit. Original position creates procedural interpretation and justice as a categorical imperative, which is the setting of the priority of rights against good.

Enquiring the Plurality Rationality

Liberalism's claims for priority of rights over good have been nonchalantly questioned among the communitarians and perspectivists. Sandel in his liberalism and its limits of justice aptly put that the priority of the right over the good is fully derived from this liberal's conception of rights identified and justified in a way that does not presuppose any particular conception of the good life. However, Rawls claimed, he did not totally eliminate the idea of total good in his conception of good, but Rawls in his thin theory, in order to secure the premises of primary goods, he improvised certain ideas of goodness. Though, goodness as rationality leaves this question to the person and the contingencies of his situation. Larmore has a point to share, that part

III of the “theory of Justice laid out a single ethical conception based on regarding an individual’s good as the object of a rational plan of life, in the light of which the citizens of a well ordered society would be moved to act justly.”¹² In his opinion, this Kantian conception in which free and rational individual would choose in ideal condition of individual autonomy would embodies multiplication of reasonable views of the human good. Following Sandelian argument that the parties in the Rawls’s original position with the capacity to choose, would necessarily demand the ground of conceptual capacity for good. Therefore, Rawls’s initial position would be bound in internal contradiction, in which different parties would inevitably enter with different capacity of moral conception and conception of good.

Further, the communitarian argues at the strictly political or social level that “individual’s rights are in some fashion fundamentally dependent on specific historical conditions and the idea that transcends such condition is a myth.”¹³ As Sandel made an argument from the Rawls’s relation of self to an ends, that if our capacity to choose is fundamental it is primarily important to acknowledge the background conditions under which these aims are to be formed. Ludwig Wittgenstein, Gadamer, and Martin Heidegger, who also for different reason, see rationality as embedded within a context and playing a role as one component along with others, rather than as an external, self sufficiently point that judges everything. Because in the heuristic understanding of knowledge, rationality and reason is closely tied to the traditions. Michael Walzer’s culture producing creature derives its principle of justice from the shared understanding of social goods in a given culture. In his opinion, “we fail to treat people as equal, if we fail to notice that they ‘make and inhabit ‘a different meaningful world from our own.’”¹⁴ But Kymlicka feels that Walzer has no room for intercultural arguments about the justice. Since if understanding of justice are not shared, and there are no principles external to the culture to which they could jointly appeal and whose decision they could jointly accept as binding them there is no point arguing. Kymlicka, therefore, conclude like

¹² . Charles Larmore, *Public reason*, op.cit., p.378.

¹³ . Mark D. Chene, “Reason and Community: the Nature and Role of Reason in politics,” *Social theory and Practice*, Vol. 25, No. 1, Spring 1999, p. 127

¹⁴ . Will Kymlicka, *Liberalism, Community and Culture*, Clarendon Press, Oxford, 1989, p.221

Rawls, that the value of the communal and cultural aspects of our existence depends to large degree, on the way that individuals form and revise attachment and projects around those features of our social life. For him, there is no real disagreement between the “individualistic’ and “social” theories, but both the theories... “like most values, the locus of the pursuit of human values, ultimately depends on the way that each individual understands and evaluates them.”¹⁵ For Kymlicka, there is no point of priority argument on rights and good.

However, unlike Kymlicka, Rawls priority of rights argument can be argued further in the intercultural synthesis of MacIntyre’s philosophical understanding in the Gadamarian sense. He introduced a perspective where our horizons one traditions blends in another horizon of traditions, thus, producing differently constituted traditions.

In his hermeneutical understanding of traditions, Gadamer developed the embeddedness of our self to the traditions. He connects reason to historical condition, for which (according to him) even the most neutral application of the method of science he claimed is guided by an anticipation of moments of tradition in the selection of the topic of research. Thus, Gadamer put that “authority and tradition does not oppose to reason by referring as legitimate prejudices,”¹⁶ It means, our reason is always related to the tradition we follows. Our rationality is simply determined by our tradition we follows. Following Gadamer’s argument, reason itself is dissimilar to different individuals of different mental caliber and prowess according to its condition of tradition. Therefore, our reason is related to our traditions we followed for common understanding of things.

Unlike Rawls, Gadamer also gives a special position to prejudice. He maintained that, if the perception of an object involves an intentional act of meaning-giving, as Husserl claimed, and if consciousness is active determiner of meaning, or

¹⁵ . Ibid, P. 253

¹⁶ . Joseph, Bleicher, *Contemporary Hermeneutics; Hermeneutics as a Method, Philosophy and Critique*, Routledge and Kegan Paul Publication, Cambridge. 1980, P.108,

interpretations, this means that the content of a perception is never entirely grounded in pure givenness or evidence, it is rather always ‘prejudiced’ by vantage point anticipation and the like. Accordingly, Rawls’s hypothetical original position for Gadamer would be a mere fiction where the real meaning of its life would not be accounted. Gadamer argument is that prejudice and tradition are essential to our understanding of our social reality. Understanding for (Gadamer) is rooted in prejudice and the way in which we understand is thoroughly conditioned by the past or what he called “effective History”.¹⁷ Gadamer’s philosophical hermeneutics shows that there exist a fundamental unity between thought, language and the world, and that it is within language, that the horizon of our present is constituted.

MacIntyre also made a sociological–cum-philosophical point that people necessarily derive their self understandings and conception of the good from the social matrix. He brought the sociological study in the general framework for understanding philosophical discourse. He tried to broaden the framework within which we think about the issue of justice and rational justification. Mac Intyre traces the relationship between practical rationality and forms of justification on the one side with various moral claims to justice on the other, finally become a discussion of hermeneutics and the interpretations of meaning in different traditions. MacIntyre’s appeals to the cultural hermeneutics of Heidegger and Gadamer, present an attempt to provide an account of rationality presupposed by an implicit in the practice of those enquiry-bearing traditions. In his book, “Whose Justice, Which Rationality,” Mac Intyre traced the history of these traditions as distinctive “communities of discourse”, “practices of enquiry” and “tradition-constitutive enquiry” from the Greeks to Modern liberalism, that introduce to a broader aspect of rationality in the public discourse of intellectual traditions.

¹⁷ . Understanding, for Gadamer is always an “effect of history” (Wirkungsgeschichte) thus, history of effect must be developed, that we should learn to understand ourselves better and recognize that in all understanding, whether we are expressly aware of it or not, the efficacy of history is at work. When a naïve faith in scientific method denies the existence of effective history, there can be an actual deformation of knowledge. Gadamer concept of understanding is not reducible to method or technique, along with his insistence of understanding located within the frame of the history. Also see, Gadamer, Hans Georg, *Truth and Method*, P. 300

Mac Intyre in his book deals with the question of rational justification on different views of justice. According to him, “some conceptions of justice make the concept of desert central, while others deny it any relevance at all. Some conceptions appeal to inalienable human rights, others to some notion of social contract, and others again to a standard of utility.”¹⁸ Mac Intyre is of the opinion that the standards of rationality itself is contentious in two related ways: that the ideal of rationality consisting in the principles of socially disembodied being would be illegitimately ignored within the context bound character, of dominant set of principles of rationality which is theoretically or practically bound in it. Secondly, the disagreement about practical rationality towards the order to resolve disagreements are likely going to fall to the question of how in fact one should proceed.¹⁹

Therefore, MacIntyre would look at the disputed question concerning justice and practical rationality are thus treated in the public realm not as matter for rational enquiry, but rather for the assertion and counter-assertion of alternative and incompatible sets of premises. MacIntyre’s rational enquiry embodied in tradition would find its rational justification that emerge from and are part of history within the tradition itself. And, as there are traditions of numerous entities his argument entails, there will be rationalities rather than rationality, just as there will be justices rather than justice. However, this specific mode of rational justification is surely bound to create an inability to resolve radical disagreement.

Mac Intyre brought the argument that the modern liberalism simply sought to established ahistorical and asocial principles, which undermined the very possibility of engaging in these rational “practices of enquiry”. According to him, “liberalism itself has become something of a tradition against tradition, one hopelessly committed to a notion of universally valid principles, whose continuities are partly defined by the interminability of the debate over such principles.”²⁰

¹⁸. Alasdair MacIntyre, *Whose justice, which rationality*, Published by Gerald Duckworth & co. Ltd., London, 1988. p.1

¹⁹. Emphasis taken from MacIntyre’s account of dominant socially bound rationality imposed on others. Also see, Alasdair Mac Intyre, *Whose Justice Which Rationality*, op.cit.,Chapter 1

²⁰. Ibid, p. 354

However, Sandel unlike Gadamer, Taylor and MacIntyre, states the mere fact that “certain practices are sanctioned by the traditions of particular community is not enough to make them just.”²¹ In his opinions “liberals who think the case for rights should be neutral towards substantive moral and religious doctrines and communitarians who think rights should rest on prevailing social values make a similar mistake: both try to avoid passing judgment on the content of the ends that rights promotes.”²² For him, “rights would depend for their justification on the moral importance of the ends they serve.”²³ Therefore, standards of rationality may differ from culture to culture; and thus we have to beware of applying our standards for a foreign practice where they may be entirely inappropriate. What lies behind the difference in standards of rationality is the difference in activities.

Nevertheless, the post modern critics also argues that reason as apodictic, ahistorical simply enacted in individual consciousness that masks the important characteristics of our social existence. Thus, it failed to recognize the essentially fallible, historical, and social nature of reason itself. Mouffe, in her book, believes, we need to broaden the concept of rationality to make room for the ‘reasonable’ and the ‘plausible’ and to recognize the existence of multiple forms of rationality. She asserts, “to that one cannot provide ultimate rational foundation for any given system does not necessarily imply that one considers all views to be equal.”²⁴ However, she thinks, “it is always possible to distinguish between the just and the unjust, the legitimate and the illegitimate, but this can only be done from within a given tradition, with the help of standards that this tradition provides, in fact there is no point of view external to all tradition from which one can offer a universal judgment. According to Mouffe, it is only in the context of a tradition that really makes room for the political dimension of human existence, and which pursuits thinking of citizenship other than as the simple possession of right that one can give an account of democratic values.”²⁵ Mouffe

²¹ . Michael Sandel, *Liberalism and Limits of Justice*, op.cit., P. xi

²² . Ibid

²³ . Michael Sandel, *Liberalims and the Limits of justice*, op.cit., p.xi

²⁴ . Chantal Mouffe, *The Return of the Political*, Verso Publication, London, 1993. p. 15

²⁵ Ibid., p.33

argues, in the words of Isaiah Berlin, that a coherent liberalism cannot abandon rationalism...but must detached ethical pluralism and political liberalism from the discourse of rationalism in order to reformulate modernity's idea of self assertions, without recourse to what present themselves as the universal dictates of reason.²⁶

Enquiring the Plurality Rationality

Rawls, however, acknowledges the plurality of rationality attached to differences of traditions. Therefore, he conceived the idea of public reason rather than individual or particular ground of justification. Rawls's original position explicitly stated that conceiving the principles of justice as the object of rational agreement comes to more than saying that each individual concerned has reason to accept them. The principles of justice are public, in the sense that each individual affirm in the light of the reason that, the other also may affirm. The notion of justice as fairness is deeply denoted with the idea of public reason, that mutual acknowledgement of principles demand public reason, and forms the precept of the social contract which articulates his conception of justice.

Public reason also emerged as a central theme in Rawls's writings in his "Political Liberalism", in the pursuit of a common ground on which people can stand despite their deep ethical and religious differences. But the concept has been always at the heart of his philosophy that runs through in the *Theory of Justice*, in the guise of the idea of "publicity".²⁷ In "Political Liberalism", Rawls seek political conception of justice for democratic society, viewed as a system of fair co-operation among free and equal citizens who willingly accept, as politically autonomous, the publicly recognized principles of justice determining the fair terms of that co-operation. His well ordered society is eulogised in the value of reciprocity and toleration, with which

²⁶ . See Chantal Mouffe, *The return of the political*, Op.cit., p.115

²⁷ . The idea of Rawls's "publicity" amounts to the demand that each person has to endorse the principles which is reasonable that others can endorse them as well. It requires that the principles of justice be grounded in a shared point of view. It is the demand that the justificatory grounds of any theory of justice must be publicly available and recognizable to all citizens – precisely because the basic structure shapes "their conceptions of themselves, their character and ends", and a publicly available theory of justice can thereby plan an educative role. Also see John Rawls, *Political Liberalism*, pp. 68,71.

everyone would enjoys the freedom within that framework. However, for Sandel Rawls's ideas of toleration, freedom and fairness are values too, and they can hardly be defended by the claim that no values can be defended.²⁸

According to Rawls, public reason is characteristic of a democratic people, it is the reason of its citizens, of those sharing the status of equal citizenship.²⁹ The content of public reason is broadly assumed in liberal character, which he means specifies certain basic rights, liberties and opportunities.³⁰ Rawls's democratic society is organized around the idea of equal citizens who has a reason to agree upon, as a collective body, exercise final political and coercive power over one another in enacting laws and in amending their constitution.

Rawls's public reason is characteristic by three ways as the reason of citizens as such, firstly, it is the reason of the public. Secondly, its subject is the good of the public and matters of fundamental justice and, thirdly its nature and content is public, being given by the ideals and principles expressed by society's conception of political justice and conducted open to view on that basis. Rawls's public reason is not one political value among others but it envelops all the different elements that make up the ideal of a constitutional democracy, for it governs "the political relation" in which we ought to stand to one another as citizenship.³¹ This is the very object of Rawls's liberal democratic regime where every difference will boils down to the rational ground of public reason within the political institution.

Further, we found that Rawls in his "Law of the people: the idea of reason revisited", public reason remain obtrusively important toward his revised political conception of justice. Wherein, he distinguished the public reason of liberal peoples and the public reason of the society of peoples. According to him, "the first is the public reason of equal citizens of domestic society debating the constitutional essential and matters of

²⁸ . Michael Sandel, *Liberalism and its critics*, op.cit., p. 1

²⁹ . John Rawls, *Political Liberalism*, op.cit., p.213

³⁰ . Ibid, p.223

³¹ . Charles Larmore, "Public Reason", p.368 – 393, Also see Samuel Freeman, *Collected Papers on Rawls*, p. 574.

basic justice concerning their own government; the second is the public reason of free and equal liberal peoples debating their mutual relations as people.”³² Rawls’s law of peoples presents the political concepts and principle ideals and criteria of this latter public reason. In his democratic society public reason is the reason of equal citizens who, as a collective body exercise final political and coercive power over one another in enacting laws and in amending their constitution.

However, within Rawls’s defining feature of public reason, we may question whether Rawls wish to accommodate family of liberal conceptions. Larmore remarks, “does not public reason effectively exclude appeal to any idea of justice that does not, like Rawls’s view the distribution of rights and resources as a matter of arranging fair terms of social co-operation? Must not utilitarians, for example, find themselves debarred from speaking their mind?”³³ Rawls acknowledges the complexity of multiple reasons, in view of that, all public reason cannot be public as there are non public reasons of churches, and other subjective values. Therefore, Rawls discussed public reason within “exclusive and inclusive view.” He insisted on inclusive view, according to which, “the content of public is not given by political morality as such, but only by a political conception suitable for a constitutional regime,³⁴ in a way the limit of reason is understood by the ideal of public values.

Further, Rawls introduced in his “political liberalism”, the distinction between the “reasonable” and the “rational”, to differentiate these two elements of reason in the original position. Rawls makes the distinction of reasonable and the rational from the Kantian perspective. The first represent pure practical reason and, the second represent the hypothetical reason. According to Rawls, “the reasonable is an element of the idea of society as a system of fair co-operation and that its fair terms be reasonable for all to accept is part of its idea of reciprocity.”³⁵ On the other hand “rational is a distinct idea from the reasonable and applies to a single, unified agent

³² . John Rawls, *The Law of people: The Idea of Public Reason Revisited*, Harvard University Press, Cambridge, London, 1999, p. 55

³³ . Charles Larmore, *Public Reason*, op.cit., p. 389

³⁴ . John Rawls, *Political Liberalism*, op.cit., p. 254

³⁵ . Ibid, pp. 49-50

(either an individual or corporate person) with the powers of judgment and deliberations in seeking ends and interests particularly its own.”³⁶ Therefore, the rational lack moral sensibility that underlies the desire to engage in fair co-operation as such. Broadly, the reasonable is taken as public in a way that rational is not.

Rawls does not conceive of the person as a pure, rational individuals exclusively searching for his own well being, but as a moral person susceptible not only to “rational” action (understood as instrumental action in one’s own interests) but also to what he calls ‘reasonable’ action implying moral considerations and a sense of justice in the organization of social co-operation. Therefore, for Rawls reasonable must have priority over the rational. Rawls gives space for the different unreasonable doctrine in his words; reasonable persons will think it unreasonable to use political power, should they possess it, to repress comprehensive views that are not unreasonable, though different from their own. This is because, given the fact of reasonable pluralism... but such a basis is needed to mark the difference, in ways acceptable to a reasonable public, between comprehensive beliefs as such and true comprehensive beliefs.³⁷ However, Rawls still identifies the plural moral and religious doctrines yet reasonable. It was in the light of the fact that his earlier solution to the stability problem that Rawls went on to develop his new theory of political liberalism.

Concluding Remarks

As the chapter is a close translation of the argument of social facts in lieu of the theoretical formulation presented in the previous chapter, we have seen Rawls’s activity of reason is the primary subject in this chapter. Rawls organizes the individual’s power of reason based on the autonomy, represented in the original position. As it is build upon the Kantian conception of the autonomy of self to the object, Rawls’s subject in the original position is considered as a free and rational being. However, Rawls’s moral authority conditioned a circumstantial limit upon the parties involve in the contract. Therefore, Rawls’s subject is a moral person with conception of good and sense of justice. This led to the preference of the given two

³⁶ . Ibid, p. 50

³⁷ . Ibid, Pp. 60-61

principles of justice. Thus, original position creates procedural interpretation and justice as a categorical imperative, which is the setting of the priority of rights against good.

We can not be quite disagreeable with Larmore that original position of Rawls's "laid out a single ethical conception based on regarding an individual's good as the object of a rational plan of life, in the light of which the citizens of a well ordered society would be moved to act justly."³⁸ He further argues "the formulation wrongly suggests that fairness derives from the rational pursuit of individual advantage, when in reality it forms an irreducible moral notion."³⁹ Rawls's conditions impose upon the parties through "veil of ignorance", constitutes moral limits. And, this moral limit consequently set his procedural principles of justice. Thus, Rawls's understanding of rationality is a condition of the moral norms, which is universal. Rawls's conception of reason further built the basis of the justification of the priority of rights over the good.

As we have discussed, communitarian strictly critiques the formulation of the conception of justice grounded on the reason based morality imposed as a universal category. We can argue from Gadamer's reason-authority embodied in traditions to look beyond Kantian apriori. Also, substantiating with MacIntyre's enquiry bearing traditions, we find that Rawlsian conception of justice has not given an accommodative space to different conception of rights. As we have discussed, MacIntyre's proposals of "communities of discourse", "practices of enquiry" and "tradition-constitutive enquiry" introduce us to a broader aspect of rationality in the public discourse of intellectual traditions. Therefore, Rawls's liberalism accused as asocial and ahistorical, is found to be the result of his conception of reason.

Though, Rawls reorganizes his conception of justice in his political liberalism, by making distinction of reason into reasonable and rational, his idea of reasonable represented as the public reason maintained the stature of authoritative imposition.

³⁸ . Charles Larmore, *Public reason*, op.cit., p.378.

³⁹ . Ibid, p.369

Rawls failed to recognize the presence of possible plural public reason, which can result to counter-public reason. The very public reason that Rawls's cited as the most liberal democratic ideals, will always remain as the public reason of the dominant traditions. Therefore, Rawls's liberalism which is an attempt to eschew the conflict of plural traditions, has turn into what Gadamer aptly put, "liberalism itself has become something of a tradition against tradition, one hopelessly committed to a notion of universally valid principles, whose continuities are partly defined by the interminability of the debate over such principles."⁴⁰ Therefore, to quote Peter Winch, "standards of rationality may differ from culture to culture; and that we have to beware of applying our standards for a foreign practice where they may be entirely inappropriate. What lies behind the difference in standards of rationality is the difference in activities."⁴¹ We can conclude that, in view of the difficulty in the plural notion of reason, we have to find the right approach to our understanding of reason itself.

⁴⁰ . Ibid, p. 354

⁴¹ . Peter Winch, "Understanding a Primitive Society," *American Philosophical Quarterly*, pp. 307-324, 1964.

CHAPTER IV

RAWLS'S POLITICAL OBJECT

The Boundaries of Plural Doctrines

Rawls's revised view is central to the distinction between political liberalism and liberalism as part of a comprehensive moral doctrine. In his book "Political Liberalism", Rawls build his argument in relation to his "A Theory of Justice". He had not discussed in "A Theory of Justice" the distinction of political conception of justice and a comprehensive doctrine. But in political liberalism, Rawls further problematized the plane of the principles of justice, by identifying not simply the pluralism of comprehensive, religious, philosophical, and moral doctrines but by a pluralism of incompatible yet reasonable comprehensive doctrines. For which, political liberalism in Rawls assumed that, plurality of reasonable yet incompatible comprehensive doctrines is the normal result, of the exercise of human reason within the framework of the free institutions of a constitutional democratic regime. Comprehensive liberalism affirms liberal political arrangement in the name of certain moral ideals, such as autonomy or individuality or self-reliance. The "A Theory of justice" is an instance of comprehensive liberalism. Rawls in his book "Political liberalism" revises the case for liberalism as political not philosophical or metaphysical, and so does not depend on controversial claims about the nature of the self,¹ of which the priority argument of the self to the end is but an error. Now in his revised conception of justice Rawls in lieu of responding to critics, states the priority of the right over the good is not necessarily application to politics of Kantian moral philosophy, but a practical response to the familiar fact that people in modern democratic societies typically disagree about the conception of good. In his political conception of justice, Rawls set the priority of right as an essential element which has central role in justice as fairness.

Unlike comprehensive liberalism, political liberalism refuses to take sides, in the moral and religious controversy that arises from comprehensive doctrines including controversies about conception of self. Rawls, in view of the difficulty involved in the historical and social analysis attempts to find a public sphere where reasonably everyone

¹. John Rawls, *Political Liberalism*, Published by Columbia University Press, New York, 1993, Pp. 29-35.

could agree on the ground of public reason. Thus, Rawls abandons the hunch of moral justification from his previous book as unrealistic and contrary to the aim of basing justice on principles that adherents of various moral and religious conception can accept. Instead of philosophical foundation built on principles of justice, political liberalism seeks the support of an overlapping consensus. Rawls's idea of overlapping consensus is that "in such a consensus, the reasonable doctrines endorse the political conception, each from its own point of view."² Rawls believes social unity will be based upon the consensus of the political conception, and only the stability can be established when doctrines of the consensus is affirmed by the citizens. Political liberalism supposes that there are many conflicting reasonable comprehensive doctrines with their conceptions of good, each compatible with full rationality of human persons, thus, the idea of overlapping consensus look for a consensus of reasonable comprehensive doctrines in a political conception of justice. It is not just pluralism as such but Rawls's, in the sense is reasonable pluralism. He opines that "the fact of reasonable pluralism is not affected in any way by particular comprehensive society that may exist in society. Nor do its principles strike a compromise between the dominant ones."³ This aims to persuade peoples to endorse liberal political arrangement, such as equal basic liberties, for different reasons, reflecting the various comprehensive moral and religious conceptions, they espouse.

For him, justice is not procedurally neutral as a political conception it aims to be the form of an overlapping consensus. Rawls however, treated neutrality of aim as opposed to neutrality of procedure by meaning that those institutions and policies are neutral in the sense that they can be endorsed by citizens generally as within the scope of a public political conception. He reiterates political liberalism does not depend for its justification on any one of those moral or religious conceptions, it is presented as a "free standing" view: it "applies the principle of toleration to philosophy itself."⁴

However, Rawls's understanding of justice in his political liberalism, now translated as an autonomous self argues for political purposes rather, than moral purposes. He insists, "we should think of ourselves as free and independent citizens, unclaimed by prior duties

² . Ibid., p. 134

³ . Ibid, p.142,

⁴ . Ibid, p.10

or obligations.”⁵ Therefore, in political liberalism what justifies the design of the original positions is a “political conception of the person”. The political conception of the person for him embodies in its scope limiting to our public identity, our identity as citizens. Thus, our freedom as citizens means that our public identity is not claimed or defined by the ends we espouse at any given time. As free person, citizens view themselves ‘as independent from and not identified with any particular such conception with its scheme of final ends.’⁶

Rawls makes distinction between our identity as citizens and our identity as moral person more broadly conceived. According to him, this separation or “dualism” between our identity as citizens and our identity as moral person “originates in the special nature of democratic political culture.”⁷ Unlike in traditional societies, where people sought to shape political life in the image of their comprehensive moral and religious ideals, Rawls attempt to present in a modern democratic society like our own, marked as it is by a plurality of moral and religious views. He has distinguished between our public and personal identities. Therefore, Rawls insist that the basic structure of society in the public political culture of a democratic society should be free from moral and religious ideals that one espouses.

According to Alejandro, “every time a critic raises an important objection, Rawls attempt to circumvent it by ascribing a political character to the main features of his paradigm.”⁸ He argues that

“the original position, for instance, is now a devise of representation; the parties are not metaphysical creatures, but a political one; the psychological “laws” governing the acquisition of the Rawlsian sense of justice is not psychological, but political. In other words, the same paradigm that tried, at all costs, to go beyond contingent attributes in order to find an archimedean point, is now invoking politics, which seems to be the very embodiment of contingency, to justify its theoretical enterprise.”⁹

⁵ . Ibid, Pp. 29-35

⁶ . Ibid, p. 30

⁷ . Ibid, p. xxi).

⁸ . Roberto Alejandro, *What is Political about Rawls's Political Liberalism?*, *The Journal of Politics*, Vol. 58, No. 1, (Feb., 1996), pp. 1-24 Published by: Cambridge University Press, 2008, p.1

⁹ . Ibid, p.1

Since Rawls's project is to find a public basis of political agreement, a conception of justice will only be able to achieve this aim if it provides a reasonable way of shaping into one coherent view, the deeper bases of agreement embedded in the public political culture, of a constitutional regime and acceptable to its most firmly held considered convictions. Political justice seeks, purposefully, to avoid the deep metaphysical questions that are part of a plural society and that are bound to remain as a permanent feature of a modernity characterized by incommensurable and conflicting visions of the good.

The following chart illustrates the major displacements found in the transition from the arguments advanced in *A Theory of Justice* to the articulation of Rawls's views of Political liberalism.

<u>Arguments presented in <i>Theory</i></u>	<u>Arguments presented in <i>Political liberalism</i></u>
Justice is based on rational choice	Justice depends on the political culture of a democratic society
Rawlsian selves are rational	Rawlsian selves are rational and reasonable
Justice relies on "true" beliefs about men and their place in society	Justice relies on "intuitive ideas" that are true, but workable
Conflicts arise from unequal distributive shares	Conflicts arise from incommensurable visions of the human good
Parties are noumenal selves	Parties are representative of democratic citizens
No place for common sense notions in the elaboration of justice	Common sense notions play an important role
Psychological "laws" are true	Psychological "laws" are not true, but philosophical
Moral education is education for autonomy encompassing the individual's whole character	Autonomy is seen as a political value; it is not an ethical ideal
Parties have a "highest-interest" in exercising their capacity for justice	Parties have a higher-interest" in exercising their two capacities

Source: Roberto Alejandro, *What is Political about Rawls's Political Liberalism?* P.7

Rawls's Conception of Political of justice

Rawls's "political liberalism" tries to answer how is it possible that deeply opposed thought, reasonable comprehensive doctrines may live together and all affirm the political conception of a constitutional regime? Or what is the structure and content of a political conception that can gain the support of such an overlapping consensus?¹⁰

In his quest for political liberalism, Rawls put three main ideas of political conception of justice.

- i) the idea of justice as fairness as a freestanding view and that of an overlapping consensus as belonging to its account of stability;
- ii) the distinction between simple pluralism and reasonable pluralism, together with the idea of a reasonable comprehensive doctrine; and
- iii) a fuller account of the reasonable and the rational worked into the conception of political (as opposed to moral) constructivism, so as to bring out the bases of the principles of rights and justice in practical reason.¹¹

To find a public agreement, he insisted a way of organizing familiar ideas and principle into a conception of political justice. Rawls's, political justice attempts to provide society in a fair system of social co-operation between free and equal persons, viewed as fully co-operating members of society over a complete life. For him, the aim of "justice as fairness, then, is practical; it present itself as a conception of justice that may be shared by citizens as a basis of a reasoned, informed, and willing political agreement."¹²

Rawls explains political conception of justice in three characteristic features. Firstly, it is a moral conception worked out for a specific kind of subject for political, social and economic institutions. It applies to a basic structure of society,¹³ in an assumed modern constitutional democracy. Secondly, a political conception of justice is presented as a freestanding view. He made categorical distinction of this political conception which he

¹⁰ . John Rawls, *Political Liberalism*, op.cit., p. xviii

¹¹ . Ibid, p. xxx

¹² . Ibid, p. 9

¹³ . Ibid, p. 11

assumed neither derived from nor is presented as a moral doctrine. Simply, presented as freestanding view and expounded apart from, or without reference to, any such wider background. He made it further clear by distinguishing the two notion of moral, namely general and comprehensive. According to Rawls, “moral conception is general if it applies to a wide range of subjects, and in the limit to all subjects universally. It is comprehensive when it includes conception of what is of value in human life, and ideals of personal character, as well as ideas of friendship and of familial and associational relationship, and much else that is to inform our conduct, and in the limit to as a whole.”¹⁴ Thirdly, political conception of justice is that its content is expressed in terms of certain fundamental principles seen as implicit in the public political culture of a democratic society. This is what Rawls calls as the “background culture” of civil society.¹⁵

Rawls’s idea of a political culture of the democratic society is set on the fundamental principles of social co-operation. For Rawls “co-operation is guided by publicly recognized rules and procedures that those co-operating accept and regard as properly regulating their conduct.”¹⁶ Fairness is attached to co-operation, because there are terms that each participant may reasonably accept, provided that everyone else likewise accepts them. It also requires an idea of each participant’s rational advantage, or good.

Rawls consider this within the tradition of democratic system in which citizens are free and equal. For him, the basic idea is that in virtue of their two moral powers (a capacity for a sense of justice and for a conception of the good) and the powers of reason (of judgment, thought and inference connected with these powers), persons are free.¹⁷ Their having these powers to the requisite minimum degree to be fully cooperating members of society makes persons equal.

So, according to Rawls in a society of overlapping consensus, it can be effectively regulated by a political conception of justice in view of the reasonable comprehensive

¹⁴ . Ibid, p.13

¹⁵ . Background Culture, Rawls understood as the culture of the social not of the political. It is the culture of daily life, of its many associations: churches and universities, learned and scientific societies, and clubs and teams, etc. See also, John Rawls, *Political Liberalism*, p. 14. Ibid

¹⁶ . Ibid, 16

¹⁷ . Ibid, p. 19

doctrines affirmed by its citizens. It makes the difference of reasonable and rational to provide the basis for toleration in a society marked by pluralism. Rawls's ideas of toleration in a fair system of co-operation is derived on reasonable ground that all may accept. Therefore, the idea of co-operation led to the reciprocity among the reasonable citizens.

However, In "Overlapping Consensus," Alejandro argues again, Rawls "gave the impression that comprehensive doctrines had to be excluded from public deliberation."¹⁸ In the sense that, Rawls's distinction between the private and public sphere, he allowed the comprehensive doctrines to reign supreme in the private dimension as long as those doctrines are compatible with justice, but expected to invoke political values in the public arena. Therefore, for Alejandro, "Rawls's understanding of politics is completely disconnected from comprehensive doctrines."¹⁹ Alejandro further remarks that, political liberalism confines this rule of exclusion to issues pertaining to "constitutional essentials and basic justice."²⁰ Yet, Rawls considered second principle is still "basic," but it is not considered part of the "constitutional essentials, and it is not even clear whether the difference principle is still part of Rawls's idea of "basic justice."²¹

There has been a major shift from *Theory* in taking notes of the exclusion of comprehensive doctrines from public deliberation in the political conception of justice. Therefore, Alejandro observes,

*"Rawls's original position is replaced by citizens who search for an "overlapping consensus." "But the shadow of the original position looms large in Rawls's politics, and in both cases we have the red thread that defines his project: the exclusion of contingent traits to preserve contingent institutions conceived in perpetuity." "*²²

In the sense Alejandro means, Rawls excluded the contingent attributes from his original position when the parties are deliberating about justice, and from the political realm in the overlapping consensus. Thus, Rawls's moral and philosophical views are obscured in

¹⁸ . Alejandro Roberto, *What is Political about Political Liberalism?*, op.cit., P.8

¹⁹ . Ibid, p.9

²⁰ . "Constitutional essentials" refer to the liberties enshrined in his first principle of justice, Alejandro, p. 9. See also, John Rawls, *Political liberalism*, p. 228-29.

²¹ . John Rawls, *Political Liberalism*, op.cit., pp. 228-29

²² . Alejandro Roberto, *What is Political about Political Liberalism*, op.cit., P.12

subjectivity in the Rawlsian dimension that rendered Rawls's ideas of plurality is in the identity of sameness. Alejandro put it, either in the original position or overlapping consensus, "the end result betrays Rawls's conception of pluralism and the parties or the citizens end up displaying a disturbing sameness."²³

However, According to Rawls, his argument of political liberalism founded on political conception of justice is needlessly results of a procedure of construction in which rational persons, subject to reasonable conditions, adopts the principle to regulate the basic structure of society. It is based on the principle of practical reason. These conception specify the framework with which principle of practical reasons are, applied. Political constructivism involves the structure and content of a political conception. According to Rawls, "the significance of the constructivist political conception is its reasonable pluralism and the need for democratic society to secure the possibility of an overlapping consensus."²⁴

In Rawlsian view, political constructivism also prioritises the significance of the constructivist political conception of justice over comprehensive moral justice. In doing so, Rawls contrasted with "Kant's moral constructivism"²⁵ with the political constructivism of justice as fairness as a form of moral realism. It also gives view of the complex conception of person and society. Rawls justifies all his points with his ideas of reasonable and applies to all the various subjects. According to Rawls, "constructivism does not proceed from practical reason alone but requires a procedure that models a conception of society and persons. He called the conception of society and person, "conception of practical reason."²⁶ Rawlsian practical reason characterizes his political constructivism, in the form of the agents who reason and specify the context for the

²³ . Ibid, p. 12

²⁴ . According to O'Neill original position is a constructive procedure which conceives which of the parties who construct principles of justice under particular abstract descriptions namely, as lacking all knowledge of their own distinguishing social features, Also See, Onora O'Neill, constructivism in Rawls and Kant, in (eds) Samuel Freeman, P. 351

²⁵ . Kant's political constructivism – is a procedure of constructive of rational agents essentially on practical reason rather than theoretical reason. He borrowed Kantian objectivity appropriated as theoretical and the practical reason. The former concerns the knowledge of given objects, where as the latter concerns the production of objects in accordance with a conception of those objects. Thus, Rawls states, as reasonable as we must, as it were, suitably construct the principles of right and justice that specify the conception of the objects we are to produce and in this way guide our public conduct by practical reason. Also, see, John Rawls, *Political Liberalism*, p. 99 & p. 117

²⁶ . John Rawls, *Political Liberalism*, op.cit., p. 107

problems and questions to which principles of practical reason apply in the public framework.

Rawls claim that his practical constructivism is based on concept of objectivity. For him, “conception of objectivity must establish a public framework of thought sufficient for the concept of judgment to apply and of conclusions to be reached on the basic of reasons and evidence after discussion and due reflections.”²⁷ This applies to either moral, political, scientical, or all sorts of enquiry to arrive at a reasonable judgment. Therefore, conception of objectivity for him, “must have a specific concept of a correct judgment made from its point of view, and hence subject to its norms.”²⁸ With this political liberalism find an account of objectivity that suffices for the purpose of political conception of justice. According to him, “political constructivism does not only accounts for the order of values but also that the moral order itself is constituted or made by the principles of practical reason.”²⁹ Thus, Rawls’s conception of society and person and the public role of principles of justice, are ideas of practical reason. Rawlsian practical reason justifies the principles of the conception of justice as reasonable for a constitutional regime. This also established the public basis of justification in the overlapping consensus for political purposes. Therefore, he maintained that “for a reasonable and workable political conception, no more is needed than public basis in the principles of practical reason in union with conception of society and person.”³⁰ The political constructivism of Rawls then, is the procedure of the overlapping consensus, where plural doctrines are reasonably appealed to moral judgment for their validity. Thus, the citizens in the overlapping society or the parties in the original position would build their public basis on the ground of the practical reason.

Critics to Rawls’s Political conception

However, Rawls’s epistemological ground of practical reason derives from Kantian conception of practical reason does not escape from his moral-based-reason foundation. Though, he makes difference of his political constructivism form the Kantian constructivism of comprehensive moral view, Rawls relies on Kant’s moral

²⁷ .Ibid, P. 110

²⁸ .Ibid, p.111

²⁹ .Ibid, p.125

³⁰ .Ibid, p. 126

constructivism to endorse his political constructivism. Simply, Rawls rejects Kantian constitutive autonomy of values as transcendental idealism, but sought to moral consciousness informed by practical reason. Kant viewed reason, both theoretical and practical, as the final court of appeal that defends our knowledge of nature and our knowledge of our freedom through the moral law. Thus, the coherence and unity of reason in Kantian sense is “alone competent to settle the scope and limits of its own authority;”³¹ and to specify its own canon and principles. Therefore, Rawls’s quest for constitutional democratic regime borrows the defense of Kantian reflection of reason to justify his ground of reasonable pluralism.

Although, the conception of justice, explained in the political liberalism specifies the constructivism of Rawls presented as the most democratic constitutional regime for modern political thought, in his defense Sandel vehemently put up three strong points as follows,

*“Firstly, however important is the political values, which Rawls appeals, it is not always reasonable to set aside the moral and religious doctrines for political purposes. Because where grave moral questions are concerned, the political agreement partly depends on which of the contending moral or religious doctrine is true. Secondly, the priority of right over the good in the political liberalism depends “on the claims that modern democratic societies that are characterized by a “fact of reasonable pluralism” about the good. And it cannot be said that “fact of reasonable pluralism” about morality and religion does not apply to question of justice. Thirdly, political liberalism may in favour of public reason limits citizens to discuss the fundamental political and constitutional question with reference to their moral and religious ideals. But it would mean a severe restriction on important dimension of political discourse for public deliberation.”*³²

Sandelian arguments shows that Rawls’s conception of political, constructed on the ideal of public reason lacks the values of different traditions that seemingly is the biggest conflict in the modern plural democratic society. In her book, Etzioni’s attempt to show apart from rational deliberations in political bodies, but in social process, where moral dialogues lead to new or reformulated shared moral understanding. “She is in the opinion that the absence of broad array of shared values – is one key reason that such groups find

³¹ . Indebted to Rawls explanation, *Political Liberalism*, p.101,

³² . Michael Sandel, *Liberalism and the Limits of Justice*, op.cit., p. xviii

it particularly difficult to resolve conflicts that arise for other reasons.”³³ Etzioni also argues against the claim of liberalism neutrality because for her, “the law (itself) is never morally neutral, (but) is at its best when it reflects widely shared moral values rather than imposes the values of one group (the majority included) on the general populous.”³⁴ From the points of Isaiah Berlin, she proposes, a limited set of values as shared and as guiding public deliberations, those values that define thin list of acceptable actions. She believes, in deliberation, in the political sense, that make “the people or factions divergent of interests arrive at shared resolutions.”³⁵ Resolution in the political realm, for Etzioni is much driven by “moral dialogues,”³⁶ which is although largely manifest in the social realm. It is in this sense that formation and reformation of power relations are at the core of the political, yet most of its decisions have moral dimensions. Her understanding on the conception of political reflects different dimension in the brims of common good.

In this sense, Rawls’s concept of political would be mere rational construction without acknowledging social reality. Another critique of Rawls’s, Mouffe also argues from the point of Micheal Oakeshot who sees *political* action as “the pursuit of intimation”. For Oakeshot, “politics is the activity of attending to the general arrangement of a collection of peoples who in respect of their common recognition of a manner of attending to its arrangement, compose of a single community spring neither from instant desires, nor from general principles, but from the existing traditions of behaviour themselves.”³⁷ In Oakeshot’s, the form it takes is the amendment of existing arrangement by exploring and pursuing what is intimated in them.³⁸ Mouffe further argues that, “Michael Sandel and Alaisdair MacIntyre inspired by Aristotle rejects liberal pluralism in the name of the politics of the common good, on the other hand, those like Charles Taylor and Michael Walzer, who, while they criticize the epistemological presuppositions of liberalism, they try to incorporate its political contribution in the area of rights and pluralism (latter hold a perspective closer to that of radical democracy).”³⁹

³³ . Amitai Etzioni, *The Common Good*, Polity Press, Cambridge, 2004, p.152

³⁴ . Ibid P.152

³⁵ . Ibid p.154

³⁶ . Moral dialogues are process in which the values of the participants are engaged and shared moral formulations may be worked out. And it is substantive but not merely procedural. See Also, Amitai Etzioni, “What is Political” in *The Common Good*. Ibid.

³⁷ . Oakeshot, Michael, “Rationalism in Politics” in Mouffe, Cahntal, *Return of the political*, Op.cit., p. 16

³⁸ .Ibid

³⁹ . Ibid

However, despite all its problems, Mouffe believes that the emergence of universalist's forms of morality and law is the expression of an irreversible collective process of learning, and that to reject this would imply rejection of modernity, thus it will result in undermining the very foundation of democracy's existence. According to Mouffe, "that modernity is undoubtedly the advent of the democratic revolution."⁴⁰ This democratic revolution is the origin of a new kind of institution of the social, in which power becomes an "empty place"⁴¹ for Mouffe. Because a society can no longer be defined as a substance having an organic identity, but a society would be without clearly defined outlines, a social structure that is impossible to describe from the perspective of single, or universal, point of view. For her, "it is in this way that democracy is characterized by the dissolution of the markers of certainty."⁴²

Mouffe argues that the enlightenment produce abstract universalism of an undifferentiated human nature, through the very modern concept that all individuals were born free and equal to each other. She further argues that the abstract conception of self created universal category that applies to anyone or everyone but she claimed as this is not the case. Thus, becomes the subsequent obstacle to the future extension of the democratic revolution. In her radical democracy, she aims to give new meaning to rights that are being claimed today as the expression of differences whose importance is only being asserted and they are no longer rights that can be universalized. Mouffe, also insists that "we acknowledge differences of the particulars, the multiples, the heterogeneous – in effect everything that had been excluded by the concept of man in the abstract."⁴³ Her radical democracy does not reject universalism but particularized, what she thinks is a need of a new kind of articulation between the universal and the particular.

According to Mouffe, "it is only in the context of a tradition that really makes room for the political dimension of human existence, and which permits thinking of citizenship other than as the simple possession of rights, that one can give an account of democratic values."⁴⁴ Mouffe holds that communitarian oppose the image of the citizens found in the tradition of civic republicanism, however this tradition according to her furnishes a

⁴⁰ . Ibid. p.11

⁴¹ . Ibid

⁴² . Ibid.

⁴³ . Ibid, p. 13

⁴⁴ . Ibid, p.33

language which permits thinking of the political in a non instrumental way. Mouffe further elaborates that the problems resides in the ambiguity of the notion of civic humanism or civic republicanism. Mouffe obviously in quest of the republican model adequate to the requirement of modern democracies, she draws the republican conception taking inspiration from Machiavelli, Montesquieu, Tocqueville and J. S. Mill: the separation of public and private and the defense of pluralism. However, he insists on the thinking of citizenship in a democratic fashion that is to say without renouncing individual liberty.

Mouffe also argued against distinction of public realm and private realm that is so prominent under the liberal conception. Following Iris Marion Young's argues that the distinction of private and public realm simply relegates the difference in a society, and excluded the minorities and powerless. Therefore, Young instead proposes a heterogeneous public that provides mechanism for the effective representation and recognition of the distinct voices and perspective of those constituent groups that one of the oppressed or disadvantaged.

However, Mouffe also finds a problem with Young's group differentiated rights of citizenship. Mouffe points out that there are irreducible antagonistic elements in a society, though liberals might try to prevail through free public reason. Therefore, according to her, "politics as the attempt to domesticate the political to keep at bay the forces of destruction and to established order, always has to do with conflicts and antagonisms."⁴⁵ Mouffe, borrowing from Derrida's ideas constitution of an identity suggest "as always based on excluding something and establishing within relations of power which she calls 'constitutive outside.'"⁴⁶

Through this exclusion, Mouffe established a way to eliminate adversaries while maintaining neutrality of the politics. For Mouffe, no "state or political order even a liberal one can exist without some forms of exclusion."⁴⁷ Her argument implies that it is important to recognize forms of exclusion, however, should recognize too for why they are excluded or for what they signify to violence rather than concealing them under the

⁴⁵ . Ibid, p. 14

⁴⁶ . Ibid

⁴⁷ . Ibid, p.145

veil of rationality. She means to say that, instead of trying to ignore the excluded, the democratic politics requires that they be brought to the fore, and make them visible to enter the terrain of contestation. Mouffe arrives to the conclusion that Rawls's two principles of justice which is chosen in the original position on the ground of its moral reason, excludes the excluded from the dialogue. In fact, it should be the organising ground of political in presence of different plural doctrines. Rawls's political conception of justice is understood as devoid of common good in Mouffe's political sense. Alejandro deduce, in Mouffe view, "the political is a space of conflicts, and since Rawls relegates conflicts to the private sphere, the political becomes a realm ruled by consensus."⁴⁸ In the words of Alejandro, Mouffe would conclude, "Rawls's 'well-ordered society' rests on the elimination of the very idea of the political."⁴⁹

However, Alejandro thinks, it is otherwise, Rawls's justice as fairness lacks a vision of the common good is "textually false and the Rawlsian liberalism abolishes politics is not persuasive."⁵⁰ He points out that the arena of conflictive claims suggests only one definition of politics. Also states that "Rawlsian politics is very much "concerned with the exclusion of divisive issues that might threaten the stability of a well-ordered society, and so interested in excluding any contingencies that might impair the orderly application of the principles of justice."⁵¹ Thus, according to Alejandro, Rawls's political liberalism does exclude certain visions of politics, particularly an agonistic politics in which the political is conceived as an arena of permanent conflicts and any attempt to solve, regulate, or deflate conflicts is seen as the negation of politics."⁵²

However, Rawls paradigm of the concept of justice is clearly seen in the absence of power. Rawlsian assumption, seemingly, is that if his two principles of justice are in place, there is no need to examine the nature of power.

⁴⁸ . Alejandro Roberto, "What is Political about Rawls's Political Liberalism?op.cit., p.21

⁴⁹ .Ibid

⁵⁰ .Ibid

⁵¹ .Ibid.

⁵² .Ibid, pp. 21-22

However, for Alejandro, in his “What is Political about Political Liberalism?” suggest that Rawls's doctrine is deeply political in the following ten points

- (1) politics as a system of rules to realize the good justice;
- (2) politics as the quest for, and the institutionalization of, common goods;
- (3) politics as the pursuit of civil order;
- (4) politics as the creation of state power;
- (5) politics as a system of principles to address and, if possible, to solve conflicts;
- (6) politics as a system of principles to avoid conflicts; and
- (7) Politics as a system of principles to accommodate different conceptions of the human good, are central to the understanding of politics of political liberalism.
Conceptions
- (8) politics as the teaching of the virtues for the sake of the public structure;
- (9) politics as participation to realize the good of community
- (10) Politics as participation for its own sake, are compatible with the liberal view, but not necessarily central.⁵³

Concluding remarks

Rawls's political conception of justice revised from his metaphysical foundation turned Rawls to take a major shift, to justify his conception of justice on the political paradigm. Political, as Rawls understand is a sought for political liberalism built on the public sphere. Thus, he introduces the idea of overlapping consensus, with a marked distinction of reasonable and rational. As discussed in the above chapter, he claims that overlapping consensus aims to persuade peoples to endorse liberal political arrangement, such as equal basic liberties, for different reasons, reflecting the various comprehensive moral and religious conceptions, they espouse. With the further distinction of reason into public and private sphere, he allowed the comprehensive doctrines to reign supreme in the private dimension as long as those doctrines are compatible with justice, but expected to invoke political values in the public arena.

Therefore, Rawls's expected the citizens to act according to the public reason which is reasonable. Rawls's idea of political culture of the democratic society is set on the plane

⁵³ . Ibid, p.20-21

of public reason. From which he expected citizens as a co-operating agent on the ground of the public reason. For Rawls “co-operation is guided by publicly recognized rules and procedures that those co-operating accept and regard as properly regulating their conduct.”⁵⁴ Thus, fairness is attached to co-operation, because there are terms that each participant may reasonably accept, provided that everyone else likewise accepts them. It also requires an idea of each participant’s rational advantage, or good. Rawls’s conception of justice, hence, is seen as procedural political construction aim for neutrality.

But Rawls, “Overlapping Consensus,” as Alejandro argues “gave the impression that comprehensive doctrines had to be excluded from public deliberation,”⁵⁵ without allowing any social process. In view of this, Sandel aptly argued that Rawls appeals to reasonable by setting aside the moral and religious doctrines for political purposes, may failed to attend where grave moral questions are concerned. Also it cannot be said that “fact of reasonable pluralism” about morality and religion does not apply to question of justice, which Rawls exclude for the sake of constitutional political regime. And importantly as Sandel argued, political liberalism may in favour of public reason limits citizens to discuss the fundamental political and constitutional question with reference to their moral and religious ideals. But it would mean a severe restriction on important dimension of political discourse for public deliberation.”⁵⁶ Therefore, Rawls’s conception of political reduces the whole concept of Political.

As discussed in the chapter, Mouffe also argued from the point of Micheal Oakeshot who sees *political* action as “the pursuit of intimation”, in due respect of their common recognition of various existing traditions of behaviour themselves. We can argue as Mouffe, that there are irreducible antagonistic elements in a society, it is not to be excluded in the sense from the public deliberation. Also, it is significant to recognize the forms of exclusion, rather than concealing them under the veil of rationality. As she mean to say that, instead of ignoring the excluded, the democratic politics requires that they be brought to the fore, and make them visible to enter the terrain of contestation.

⁵⁴ . John Rawls, *Political Liberalism*, op.cit., 16

⁵⁵ . Alejandro Roberto, op.cit., P.8

⁵⁶ .Michael Sandel, *Liberalism and the Limits of Justice*, op.cit., p. xviii

Therefore, we conclude with Mouffe that Rawls's two principles of justice which is chosen in the original position on the ground of its political construction, excludes the plural moral doctrines from the dialogue.

Though, Alejandro accused Mouffe of misreading Rawls political liberalism, and settled with Rawls conception of political, yet he admits with Mouffe, that Rawls's paradigm of the concept of justice is without the notion of power. Thus, Rawls's political liberalism is concluded in the narrowest definition of political, simply in defends of his conception of justice.

CHAPTER V

CONCLUSION

Rawls's major work on *Theory of justice* has undoubtedly shown its receptive façade of arguments to all his critics. His later books have also shown invariable substance in justifying his philosophical foundation. Most importantly, the involuntary modification of the ground of justice with practical reason has been quite a major shift from his comprehensive philosophical foundation in theory of justice to conception of political liberalism. This is clearly an indication of restructuring of his Kantian premises from his foundational ground of concept of justice. But as discussed in the chapter II, long before the communitarians, perspectivists and the perfectionists questioned the validity of Rawls's theory, grounded on the Kantian philosophical foundation, pre-Rawlsian classical liberalism has notably questioned Kantian liberalism based on a-priori conception.

In his objection to the Kantian apriori liberalism, Raymond Geuss argues from the understanding of the four chief components of the classical liberalism of Constant, J. S. Mill, and De Tocqueville. "Firstly, liberals assign a high positive value to toleration, as the cardinal virtue of human societies. This is the oldest layer in the liberal synthesis. Secondly, liberals attribute special normative importance to a particular kind of human freedom. Society should consist as much as possible of voluntary relations between people, and in particular, the free assent of the members is the only source of political authority. Thirdly, liberals are committed to individualism: a society is good only to the extent to which the individuals in it are well off. Fourthly, liberalism is characterized by a particular kind of anxiety, the fear of unlimited, concentrated, or arbitrary power. Limitation of such power is thus always a goal of liberal politics."¹ We, therefore, look into both the vantage point; critiquing Kantian premises in Rawls's conception of Justice and evaluating Rawlsian liberalism.

¹ . Raymond Geuss, "Liberalism and Its Discontents", *Political Theory*, Sage Publications Inc. Vol. 30, No. 3, Jun., 2002, , p. 323

From the Chapter I, we can find that Rawlsian concept of Justice which needs no ground of justification, but as the bases were built on priority of right over good which was premised on the unity of self, has been challenged by the communitarians, perspectivists and the perfectionists. Rawlsian conception of the self prior to the end is based on the Kantian apri-ori. Though, Rawls claims to have avoided the Kantian apri-ori through his Humean situation of original position, but as Sandel insists, deontological liberalism cannot be rescued from the difficulties associated with Kantian subject, it rendered vulnerable in other areas.

Therefore, the belief among the communitarian critics, rights cannot be prior to good, or rather that principles of justice certainly depends on the justifiable grounds of the conception of good. As discussed in chapter II, we presents our case through Sandel's critics that principles of justice derives their justification from values commonly espoused or widely shared in a particular community or tradition. More starkly, Mac Intyre, Charles Taylor and Michael Walzer had argued that the conception of justice derives its necessary ground of justification from the conception of the good espoused in the traditions. In the chapter, Sandel had also argued that the parties in the original position for Rawls may be devoid of the knowledge of their background, talents and skills but certainly they have their capacity to choose which is good for them. It can be argued that Sandel is no less true, the capacity of the individual certainly has a moral background. Otherwise, the very thin theory of Rawls's could not realize without any antecedent knowledge of conception of good. We can clearly figure out that justice depends always on certain conception of good which Rawls might call it "thin or thick".

Sandel makes an argument that both "liberals who think the case for rights should be neutral towards substantive moral and religious doctrines and communitarians who think rights should rest on prevailing social values make a similar mistake."² As we have elaborated in chapter II, for him, "concept of justice will depend on the moral importance of the end they serve."³ Nevertheless, from the concluding remarks in the same chapter, we find that, Sandel's conception of ends will be historically given as his constitutive

². Michael Sandel, *Liberalism and Limits of Justice*, Cambridge University Press, Cambridge, 2nd Edition, 1998, P. xi

³. Ibid

self. Thus, Sandelian conception of self will be no different from the communitarian like the rest which he denies. If not, as we have argued, for Kymlicka as for Sandel “there is no real boundary to differentiate the liberal and the communitarian on the ground of the priority concept”.⁴ Or as Sandel further argued in the same chapter, Kymlicka has to show why the liberal’s concept of the priority of the self to the end is wrong. Sandelian conception has failed to give convincing argument to Rawls’s priority conception of self to the end. We may conclude by quoting Mouffe that “Sandel’s critiques of liberalism operates within a fundamental Aristotelian problematic where there is not yet a separation between morality and politics and where there is no true differentiation between the common political good and the common moral good.”⁵

Chapter II further discusses other than communitarians such as, Chantal Mouffe’s, Richard Rorty’s and Michel Foucault’s arguments against Kantian unity of self. However, their identification of self is not merely against the Rawlsian kind of abstraction; but, they are also against the enlightenment discourse that created homogeneity and unity of identity. Rorty rightly points out, the abstraction of self in the Kantian perspective is the product of enlightenment rationalism that introduced transcendental categories which tabooed autonomy of individuals and brought “cultural life.”⁶ According to Rorty, “what was needed, and what the idealist were unable to envisage, was a repudiation of the very idea of anything – mind or matter, self or world – having an intrinsic nature to be expressed or represented.”⁷ Rorty is quite critical to the intrinsic value, which is the primary defining precept of social category bequeathed from the enlightenment rationalism. Rorty’s understanding of self is quite contingent which revolves around the notions of metaphors and self creation rather than around the notion of truth, rationality and moral obligation which he claimed is much suited to our

⁴ . For Sandel, Liberalism has always included some account of our essential dependence on our social context, some account of the forms of human community and culture which provide the control for individual development, and which shape our goals and our capacity to pursue them. For him, like most values, the locus of the pursuit of human values, ultimately depend on the way each individual understands and evaluates them. Also see, Will Kymlicka, *Liberalism Community and Culture*, p.253

⁵ . Chantal Mouffe, *The Return of the political*, Verso Publication, London, 1993, p.32

⁶ . Cultural life, for Rorty is the abstraction the identity of individuals within the prescription of the cultural community. Also see, Richard Rorty, *Contingent of Community*.

⁷ . Richard Rorty, *The Contingency of Language*, *London Review of Books*, 17 April, 1986, p. 3

societies, there is no central self called 'reason'.⁸ Because according to him, freedom is the recognition of contingency and such freedom is integral to the idea of liberalism.⁹

However, unlike Rorty, Mouffe defended for modernity as an unavoidable notion of her radical democracy. But, Mouffe is certainly against Rawlsian conception of self, according to her, the "essentialist projection of the unity of identity is the consequence of the Kantian hypothetical conception of subject."¹⁰ As she had argued further in the passage, there is no a priori necessary relation between the discourses that construct its different subject position. Mouffe's identity of the subject has a multiple relations through the relations of subordination and over determination. For her, "a single individual can be the bearer of this multiplicity and be dominant in our relations while subordinated in another".¹¹ Hence, she insisted that it will be necessary to theorise the identity of "individual as a site constituted, by an ensemble of 'subject positions', inscribed in a multiplicity of social relation, the members of many communities and participant in a plurality of collective forms of identification."¹²

However, Mouffe will not deny the necessary link between subject positions, which according to her would be through articulation. Mouffe's political philosophy will have an important role to play not only in deciding the true meaning of notions like justice, equality or liberty, but in proposing different interpretations of those notions. According to Mouffe, "Justice is not only a question of interpretation and application of the criteria of distribution, but also the distinctions and the boundaries between the different spheres."¹³ Mouffe demonstrates how one can imagine justice without searching for a universal point of view and without elaborating general principles valid for all societies.

Therefore, Rawls's conception of self understood from the communitarian critics and the contingent interpretation of self, lead us to derive that Kantian conception of self failed to incorporate cultural common good and the possibility of particularities to develop. We

⁸ . Richard Rorty, *Contingency of Selfhood*, *London Review of Books*, 8 May, 1986, pp. 11-15, p. 12

⁹ .Ibid.

¹⁰ . Chantal Mouffe, *The Return of the Political*, op.cit., p.76

¹¹ . Ibid, *The Return of the political*, p. 77

¹² . Ibid.

¹³ . Ibid, p.34

can further elaborate in his context of original position where the self is represented as parties, destined to choose the two given principles of justice conditioned by Kantian moral authority. However, later in his political liberalism as discussed in Chapter IV, Rawls's party in the original position according to Alejandro is replaced by citizens who are searching for an "overlapping consensus."¹⁴ Rawls had claimed that distinction of this political conception neither derived from nor presented as a moral doctrine, but presented as freestanding citizenship without any duties and obligation.

His political conception of justice is that its content is expressed in terms of certain fundamental principles seen as implicit in the political culture of a democratic society. However, as Rawls claimed in chapter IV, the political culture of democratic society is based on social co-operation, guided by publicly recognized rules and procedures that those co-operating may accept and regard as properly regulating their conduct. Therefore, his political conception of justice is a result of a procedural construction in which rational person who is subject to reasonable conditions, adopts the principles in order to regulate the basic structure of society. From the discussion in chapter III, we can find that the conception of justice is based on the principle of practical reason that specifies the public framework of thought. And, he intends to apply to either moral, political, scientific, or all sorts of enquiry to arrive at a reasonable judgment. With this, Rawls's political liberalism finds an account of objectivity that suffices for the purpose of political conception of justice. Political constructivism does not only account the order of values but also that the moral order itself is constituted or made by the principles of practical reason.

However, in the concluding remarks of the same chapter, we have argued that it is not always reasonable to set aside the moral and religious doctrines for political purposes. Rawls in quest of public reason in his conception of political liberalism has reduced the notion of political into an instrumental interpretation. Therefore, Sandel's critique to Rawls's conception of political has shown to us three significant points where Rawls's conception of political failed to take notice. Firstly, where grave moral questions are concerned, the political agreement partly depends on which of the contending moral or

¹⁴. Robert Alejandro, "What is Political about Rawls's Political Liberalism?" *The Journal of Politics*, Published by Cambridge University, Vol. 58, No. 1, Feb., 1996, pp.11-12

religious doctrine. Secondly, in view of the exclusion of comprehensive doctrines, Rawlsian conception of political will create a severe restriction on important dimension of political discourse for public deliberation. In the conception of political liberalism, Rawls failed to discuss the relation of power and look into the activity of the power relations.

Another critique to Rawls's conception of political, Mouffe, also points out in the same chapter, that Rawls's form of exclusion is detrimental to the democratic system. Like Rawls, Mouffe beliefs in the inevitable exclusion of certain antagonistic forces. But the form of exclusion between the two lies in distant difference. Unlike Rawls, Mouffe gives importance to recognize those forms of exclusion for what they are and the violence that they signify instead of concealing them under the veil of rationality. She provides a space even among the excluded forces to enter the terrain of contestation. Therefore, Mouffe disagree with Rawls's two principles of justice which is to be chosen in the original position on the ground that it was the most appropriate, however, she thinks "(it) excludes from the dialogue those who believe that different values should be the organizing principles of the political order."¹⁵ Mouffe feels that "Rawls's incapacity to consider the political is explained by the fact that this constitutes the blind spot of liberalism, which tends to reduce it to an instrumental activity."¹⁶ Mouffe also rejects Rawls's political liberalism that manifests a strong tendency towards homogeneity and contestation in the sphere of politics.

Mouffe's concept of political gives nearer emphasis on attending the general problems of the conflicting forces. In her scheme of Radical democracy, Mouffe, demands that "we acknowledge differences of the particulars, the multiples, the heterogeneous – in effect everything that had been excluded by the concept of man is the abstract."¹⁷ Mouffe's radical democracy does not rejects universalism but locates universalism in particularities. What she think is a need of a new kind of articulation between the universal and the particular. And her argument against the communitarian in chapter IV,

¹⁵ .Ibid, p.141

¹⁶ Ibid

¹⁷ . Chantal Mouffe, *The return of the political*, op.cit., p. 13

also clearly states for a democratic society, we should appeal to civic republicanism that furnishes a language which permits thinking of the political in a non-instrumental way.

Though, Alejandro settled with Rawls's conception of political as deeply political his discussion in the chapter showed us that Rawls's conception of justice becomes an administrative and juridical issue and citizens become recipients of the primary goods regulated and administered by the public structure. Thus, Rawls's political liberalism is concluded in the narrowest definition of political, simply in defends of his conception of justice.

Therefore, we state that Rawls's political liberalism is another comprehensive conception disguised as a "political" one. For it, too, includes conceptions of what is of value in human life, ideals of personal virtue and character that are to inform our thought and conduct as a whole. Rawlsian individual has a clear understanding of what is valuable in human life; namely, to have a higher-order interest, which is justice; to construct and pursue a rational plan; to have the possibility of revising it; and to possess a plurality of final ends, which means a conception of good and sense of justice. In due disguise of public reason, Rawls's political liberalism attempts to create universalism of his concept of justice. The unrepresented and the voiceless people's tradition may never contend with the regulated forms of Rawls's political liberalism in the guise of the object of public reason. One finds that Rawls's persistent defense for his conception of justice, is but the universalism of Rawlsian discourse continued in the Kantian apri-ori concept. Rawls's ground of justice does not give possibilities of freer desires and emancipation in his conception of justice.

Nevertheless, Rawls's conception of justice receives wide attention of the social science thinkers, the more critics it receives, the wider in the study of the discourse of justice lead us to reconstruct to the best. In order to nurture the most democratic liberal traditions we need to attend to the maximum criticism. Therefore, attending the critiques to the Rawlsian ground of justice, we deduced that enlightenment discourse creates abstract universalism of an undifferentiated human nature, through the concept that all individuals were born free and equal. Rawls's defense for the conception of justice through his latter

works could not redeem its weaker side of Kantian premises. However, it does not make us to reject the conception of justice in toto. Rather, it leads us to the vantage point in order to reformulate conception of justice in the larger democratic value.

The study to Gadamer's hermeneutical interpretations of reason-authority embodied in tradition and MacIntyre's enquiry bearing traditions have shown sufficient ground that our rationality is related to our traditions, and self is constitutive of social context. Hence, the communitarian's argument that self is historically given in its background condition cannot be denied. However, in order to avoid the universal restriction of liberty of the individual from the historical-social condition, we must redefine the autonomy of self. Perhaps, Sandel's priority of the self to the ends can be reexamined in the discursive understanding of self. But the contingent self will neither escape from its historical givenness, even in Mouffe's discursive identity of particulars. Since, in a given contingent context the self will be historically situated in the particular context, the identity of the self would be enveloped by the social-historical conditions without giving any autonomy to self. We are likely to suffer the same questions of priority concept in the particularity of Mouffe's discursivity, whether to define the self by the social-historical context or in its rational autonomy of the self.

The complicated problems and the cyclical argument in arresting the fluid identity of self, resulted to the unsettled debate in the conceptions of rights and justice. From the discussion in the chapters, we have found that this unsettled problem cannot be simply reduced by the procedural or instrumental activities. Nor, in any social – political arrangement studied so far. It is reflected as a general problem of contestation of concepts at all the social science categories. Therefore, the approach to the study of concept itself could be wrong, as the concept itself is the methodical category of the enlightenment rationalism.

BIBLIOGRAPHY

Books

- Bleicher, Joseph, *Contemporary Hermeneutics; Hermeneutics as a method, Philosophy and Critique*, Routledge and Kegan Paul Publication, Cambridge, 1980.
- Dworkin, Ronald, *Taking rights seriously*, Universal Law Publishing Co. Pvt. Ltd, Delhi, 2nd Reprint, 1999.
- Etzioni, Amitai, *The Common Good*, Polity Press, Cambridge, 2004
- Foucault, Mitchell, "The subject and power", in Lukes, Steven (ed), *Power*, Published by Basil Blackwell Ltd., Cowley, Oxford, U.K., 1986.
- Freeman, Samuel, (ed), *The Cambridge Companion to Rawls*, Cambridge University Press, Cambridge, 2003.
- Freeman, Samuel (ed), *Collected papers on John Rawls*, Oxford University Press, New York, 1999.
- Gadamer, Georg Hans, *Truth and Method*, Published by Continuum, London, 2nd Revised Edition, London, 2004.
- Kymlicka, Will, *Liberalism, Community and Culture*, Clarendon Press, Oxford, 1989.
- Larmore, Charles "Public Reason", p.368 – 393, (ed), *The Cambridge Companion to Rawls*, Cambridge University Press, Cambridge, 2003.
- MacIntyre, Alasdair, *Whose Justice, Which Rationality*, Published by Gerald Duckworth & co. ltd., London, 1988.
- Mouffe, Chantal, *The Return of the Political*, Verso Publication, London, 1993.
- Mulhall, Stephen and Swift, Adam, "Rawls and Communitarianism", Freeman, Samuel (ed), *Cambridge Companion to Rawls*, Cambridge University Press, Cambridge, 2003, Pp. 460-488.
- Nozick, Robert, *Anarchy, State and Utopia*, Published by Basic Books, Inc. 1974.
- Nozick, Robert, *The Nature of Reason*, Princeton University Press, New Jersey, 1993.
- Nussbaum, Martha "Rawls and Feminism", Samuel Freeman (ed), *Cambridge Companion to Rawls*, Cambridge University Press, Cambridge, 2003, Pp. 488-520.

Onora, O'Neill, "Constructivism in Rawls and Kant," Freeman, Samuel (ed), *Cambridge Companion to Rawls*, Cambridge University Press, Cambridge, 2003, Pp. 347-367.

Plato, *The Republic*, translated with an introduction by, Lee, Desmond (2nd eds.), Penguin Books, Cambridge, 1974.

Rawls, John, *A theory of Justice*, Clarendon Press, Oxford, 1971.

Rawls, John, *Political Liberalism*, Published by Columbia University Press, New York, 1993.

Rawls, John, *The Law of Peoples: The Idea of Public Reason Revisited*", Harvard University Press, Cambridge, London, 1999.

Sandel, J. Michael, *Liberalism and the Limits of Justice*, Cambridge University Press, Cambridge, 2nd Edition, 1998.

Sandel, J. Micheal, *Liberalism and its Critics*, Basil Blackwell Publisher Ltd., 1984.

Articles

Barry, Brian, "Liberalism and the Limits of Justice" by Michael Sandel, (Book Review), *Ethics*, Vol. 94, No. 3. (Apr., 1984), pp. 523-525 URL: <http://links.jstor.org>, Accessed: Mon, Jan 2, 2008.

Franco, Paul, "Hegel and Liberalism" in *The Review of Politics*, Vol. 59, No. 4, (Autumn, 1997), pp. 831-860 Published by: Cambridge University Press for the University, Notre Dame, URL: <http://www.jstor.org/stable/1408309> Accessed: May 14, 2008.

Fried, Charles, "Liberalism, Community, and the Objectivity of Values", in Review works by Michael Sandel, *Harvard Law Review*, Vol.96, No. 4. (Feb., 1983), pp. 960-968, URL: <http://links.jstor.org>, Accessed: Mon, Jan 2, 2008.

Geuss, Raymond, "Liberalism and Its Discontents", *Political Theory*, Inc. Vol. 30, No. 3, (Jun., 2002), Sage Publications, pp. 320-338.

Larmore, Charles, "Liberalism and the Limits of Justice", by Michael Sandel (Book Review), *The Journal of Philosophy*, Vol. 81, No. 6. (Jun., 1984), pp. 336-343, URL: <http://links.jstor.org>, Accessed: Mon, Jan 2, 2008.

Mark D. Cheney, "Reason and Community: the Nature and Role of Reason in politics", *Social Theory and Practice*, Vol. 25, No. 1 (Spring 1999).

Roberto, Alejandro, "What is Political about Rawls's Political Liberalism?" *The Journal of Politics*, Vol. 58, No. 1, (Feb., 1996), pp. 1-24 Published by: Cambridge University Press on behalf of the Southern Political Science Association Stable URL: <http://www.jstor.org/stable/2960346> Accessed: 14/05/2008.

Roelofs, Joan, "Liberalism and the Limits of Justice" by Michael Sandel, (Book Reviews), *The Journal of Politics*, Vol.46, no. 3. (Aug., 1984), pp.991-993. URL: <http://links.jstor.org> Accessed: Mon, Jan 21, 2008.

Rorty, Richard, "Contingency of Language", *London Review of Books*, 17 April, 1986, pp. 3-5.

Rorty, Richard, "Contingency of Selfhood", *London Review of Books*, 8 May, 1986, pp. 11-15.

Sandel, J. Michael, "Political Liberalism" by John Rawls, (Book Review), *Harvard Law Review*, Vol. 107, No.7. (May, 1994), pp. 1765-1794. URL: <http://links.jstor.org>, Accessed: Mon, Jan 2, 2008.

Winch, Peter, "Understanding a Primitive Society", *American Philosophical Quarterly*, pp. 307-324, 1964